TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 194.

THE CITY OF ST. LOUIS, APPELLANT,

vs.

THE ST. LOUIS AND SUBURBAN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 10, 1907.

(20,520.)

(20,520.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 194.

THE CITY OF ST. LOUIS, APPELLANT,

vs.

THE ST. LOUIS AND SUBURBAN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Citation	1	1
Acceptance of service of citation	1½	1
Caption	2	1
Bill of complaint	2	1
Exhibit A—Ordinance No. 15547, March 28, 1890	27	16
B—Ordinance No. 15954, February 6, 1891	35	21
C—Ordinance No. 19250, April 5, 1898	45	27
D—Ordinance No. 19383, June 10, 1898	51	30
E—Ordinance No. 21087, March 25, 1903	58	35
Ordinance No. 19550, November 25, 1898	62	37
Ordinance No. 19954, February 23, 1900	64	38
Subpœna	66	39
Marshal's return	67	40
Appearance for defendant	67	40
Answer	67	40
Replication	78	47
Stipulation as to preliminary injunction	79	48
Motion for preliminary injunction	79	48
Preliminary injunction	80	49
Evidence for complainant	81	50
Testimony of E. P. Sommers	81	50
Stipulation as to facts	110	69

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 3, 1907.

	Original.	Pri
Testimony of J. S. Walsh, Jr.	110	
Stipulation as to ordinances	115	
Ordinance No. 15954, February 6, 1891	116	
No. 15547, March 28, 1890	126	
No. 19350, April 5, 1898	134	
No. 19393, June 10, 1898	139	
No. 19954, February 23, 1900	146	
No. 19550, November 25, 1898	147	
No. 21087, March 25, 1903	148	
Examiner's certificate	151	
Argument and submission	152	
Decree	152	
Order allowing appeal	153	
Assignment of errors	154	
Petition for appeal	156	
Bond on appeal	156	
Opinion	158	16
Clerk's certificate	162	16

1 The United States of America to The St. Louis and Suburban Railway Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein The City of St. Louis is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable G. A. Finkelnburg Judge of the Circuit Court of the United States for the Eastern District of Missouri, this 11th day of December, in the year of our Lord one thousand nine hundred and six.

G. A. FINKELNBURG,
United States District Judge for the Eastern District of Missouri.

1½ [Endorsed:] In Equity. No. 4987. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. St. Louis and Suburban Railway Company *vs.* The City of St. Louis. Citation. Filed Dec. 11, 1906. James R. Gray, Clerk.

Service of the within citation acknowledged this 11th day of Dec. 1906.

BOYLE & PRIEST,
Att'ys for Appellees.

2 In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Be it Remembered, That heretofore, to-wit: On the 23rd day of April A. D., 1904, there was filed in the Clerk's office of said Court a certain bill in equity and five exhibits and two ordinances, which said bill, exhibits, and ordinances are respectively in words and figures as follows, to-wit:

Petition.

The complainant, the St. Louis & Suburban Railway Company, brings this, its bill, against the above named defendant, and humbly complaining, states:

1. That the St. Louis & Suburban Railway Company is a corporation, created by and existing under the laws of the State of Missouri, having its principal office and place of business in the City of St. Louis in the State of Missouri in the Eastern Division of the Eastern Judicial District of said State.

2. That the City of St. Louis is a Municipal Corporation of
3 the State of Missouri, in the Eastern Division of the Eastern Judicial District of said State.

3. That the City of St. Louis is authorized by its charter, through its Municipal Assembly acting by ordinance, to determine all questions arising with reference to street railroads in the corporate limits of the city, which may involve the construction of such street railroads, granting the right-of-way or regulating and controlling them after their completion; and it has power also in like manner to sell the franchises or right-of-way for such street railroads to the highest bidder, or, as a consideration therefor, to impose a *per capita* tax on the passengers transported, or an annual tax on the gross receipts of such railroad on each car, and no street railway may be incorporated or built in the City of St. Louis, except according to the above stated conditions of the charter, and in such manner and to such extent as may be provided by ordinance; that the said St. Louis & Suburban Railway Company was incorporated to construct, maintain and operate, and is lawfully authorized and empowered to construct, maintain and operate street railways in the said City of St. Louis and also in the County of St. Louis, Missouri, adjacent to said City; and that it was authorized by ordinance of the City of St. Louis, Numbered 15,954, and other ordinances of said City hereinafter mentioned, to construct, maintain and operate street railways on Union Avenue and other streets in said City in said ordinance described and to acquire the rights, franchises, immunities, privileges, concessions and property of other street railway companies in the City of St. Louis and to operate the same. And pursuant to such authority, it has by construction and purchase, acquired a large system of street railways in the said City of St. Louis.

4. That among the lines of street railway in said City of St. Louis, owned and operated by the said St. Louis & Suburban Railway Company and street railway franchises which it was authorized to acquire and which it did acquire, are the lines and franchises originally granted by the City of St. Louis to the St. Louis, Central and Western Railway Company, by ordinance No. 15,547, approved March 28, 1890; that by said ordinance No. 15,547, said St. Louis, Central and Western Railway Company, its successors and assigns, was authorized to construct, maintain and operate its lines over the streets of the City of St. Louis therein mentioned for the period of forty-seven years, from the date of said ordinance, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition and as a consideration that it, the said Company, its successors and assigns, should for the rights and franchises received, pay to the Treasurer of the City of St. Louis, for account of said City, on the last day of December of each year, begin-

ning three years from the approval of said ordinance, for the term of five years, the sum of $1,000.00, and for the further period of five years, the sum of $2,000 per annum, and from that time until the expiration of the rights and franchises granted by said ordi-
4 nance, the sum of $4,000.00 per annum; and said ordinance No. 15,547 was duly accepted by said St. Louis, Central & Western Railway Company, for itself, its successors and assigns, and constitutes a contract between the said City and the said Company, its successors and assigns, which the said City has no right to alter, impair or abrogate.

That the said St. Louis & Suburban Railway Company was expressly authorized by ordinance No. 15,954, of the said City of St. Louis, approved February 6, 1891, to acquire the said rights, privileges and franchises granted to the said St. Louis, Central and Western Railway Company by said ordinance No. 15,547, but upon the express condition that said St. Louis & Suburban Railway Company should not be relieved "from any obligation in regard to the amount of money to be paid to the City of St. Louis, under the provisions of ordinance No. 15,547."

5. That among the lines of street railway in said City of St. Louis, owned and operated by the said St. Louis & Suburban Railway Company, are the lines acquired, constructed, maintained and operated under and by virtue of the said ordinance No. 15,954, of said City of St. Louis, approved, Feb. 6, 1891.

That by said ordinance No. 15,954, the said St. Louis & Suburban Railway Company was authorized to acquire, construct and maintain and operate, a double track passenger railroad, over streets, alleys and City blocks in the said City of St. Louis, therein mentioned, for the period of 45 years from the date of the approval of said ordinance, upon certain expressed conditions as to the mode of constructing and operating the same, and for the consideration that it should not charge for transportation of passengers in excess of the rates of fare in said ordinance prescribed, to-wit, five cents for
5 all persons over twelve years of age, and two and one-half cents for persons under twelve years of age, for a continuous passage one way, which said right to charge as aforesaid is indispensible to the existence of complainant, and upon the further condition and as a consideration for the grant of the rights and franchises given to it by said ordinance, and the right to charge for transportation, that it, the said St. Louis & Suburban Railway Company, its successors and assigns, should for the rights, privileges, right to charge for transportation and franchises granted by said ordinance, construct a depot building and waiting room to be located at the terminus of its tracks in Forest Park in said City of St. Louis, upon ground belonging to the City of St. Louis, in accordance with the following provisions and conditions, as set forth in said ordinance, to-wit:

"Said Railway Company, its successors and assigns, shall cause plans and specifications to be procured for said depot building and waiting room by a skilful architect or architects and to cost not less than $25,000, which said plans and specifications shall be submitted

to and shall be subject to the approval of the Board of Public Improvements, and when so approved, said Company, its successors or assigns, shall procure bids for the construction of said depot building or waiting room, from at least three responsible parties, which said bids shall be submitted by said company to said Board of Public Improvements, and said Board shall accept the lowest of said bids; but no bids shall be accepted by said Board unless the same shall amount to at least the sum of $25,000.00; and said company, its successors and assigns, shall thereupon cause said depot building and waiting room to be constructed at its own cost and expense, in accordance with said plans and specifications and according to
6 the terms of the contract so awarded by said Board of Public Improvements and the construction of said depot building and waiting room shall be under the supervision of said Board of Public Improvements. Said depot building when completed, shall become the property of the City of St. Louis, and be under the regulations of the Park Commissioner, subject, however, to the use of said Railway Company, as a passenger depot."

That said ordinance No. 15,954, was accepted by said St. Louis & Suburban Railway Company, and acted upon by it, and the lines of railway authorized by said last named ordinance and by said ordinance No. 15,547, have been constructed, maintained and operated upon the faith and credit of said ordinance, and the said two last named ordinances constitute a contract between the said City and the said Company, its successors and assigns, which the said City has no right, or authority to alter, impair or abrogate, or to lessen the revenues to complainant receivable by complainant thereunder; that all said revenues are inadequate to meet all its obligations, and to pay said one mill tax.

And the said lines of street railway have been maintained and operated continuously since the same were constructed by the said St. Louis & Suburban Railway Company, and all the conditions and requirements of the aforementioned ordinances, (except where the same have been changed by mutual consent) have been kept by the said St. Louis & Suburban Railway Company, and all the payments required by the said ordinances to be made, have been made as and when the same respectively became due.

6. That among the lines of street railway in said City of St. Louis owned and operated by the St. Louis & Suburban Railway Company,
7 are lines constructed, maintained and operated under and by virtue of the provisions of ordinance No. 19,350, of said City of St. Louis, approved, April 5, 1898.

By said ordinance of said City, No. 19,350, said St. Louis & Suburban Railway Company, was authorized to extend its lines and in conjunction with the St. Louis & Meramec River Railroad Company, to construct, maintain and operate the same, over the streets of the City of St. Louis, therein mentioned for a term ending February 6, 1936, upon certain express conditions as to the mode of constructing and operating the same and upon the condition and for the consideration, that it, the said St. Louis & Suburban Railway Company, in conjunction with said St. Louis & Meramec River Rail-

road Company, should, whenever any of the streets upon which the tracks of said St. Louis & Suburban Railway Company were authorized to be laid, should be repaired or re-constructed, said Company, upon being notified by the street commissioner so to do, cause the space between the rails and tracks, and 12 inches outside thereof, to be repaired and reconstructed with the same material or better, with which the remainder of the street is repaired or reconstructed, to the satisfaction of the Street Commissioner.

And upon the further condition and as a consideration for the rights and franchises granted to them by said ordinance, that they, the St. Louis & Suburban Railway Company and the St. Louis & Meramec River Railroad Company, should each year until the expiration of the rights and privileges granted by the said ordinance, pay to the Treasurer of the City of St. Louis, for account of said City, the sum of $3,500.00 per annum, on the 31st day of December, of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

And the said last named ordinance was accepted by said St. Louis & Suburban Railway Company and the St. Louis & Meramec
8 River Railroad Company, and constitutes a contract between said City and the said Company, its successors and assigns, which the said City has no right or authority to alter, impair or abrogate.

And the said lines of street railway authorized by said ordinance were at once constructed by the St. Louis & Suburban Railway Company and the St. Louis & Meramec River Railroad Company and have been maintained, and operated continuously since the same were so constructed, and all the conditions of the aforementioned ordinance have been kept by the said companies and all payments required by the said ordinance to be made by them, have been made as the same respectively became due.

7. That among the lines of street railway in said City owned and operated by the said St. Louis & Suburban Railway Company are the lines constructed, maintained and operated by the authority and under the provisions of ordinance No. 19,393, of the City of St. Louis, approved June 10, 1898; that by said ordinance 19,393, said St. Louis & Suburban Railway Company, was authorized to extend its lines and to maintain and operate the same over the streets of the City of St. Louis therein mentioned for a term expiring February 6, 1936, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition, and for the consideration that the fare from any point or station on the extension of said railway authorized by said ordinance, to any point on the line of said extension, or to any point on its main or branch lines operated under the authority given by ordinance No. 15,954, or to any point on the St. Louis & Meramec River Railroad Company's line of railroad within the City limits, or from any point on said main line and branches operated
9 under said ordinance No. 15,954, or from any point on said St. Louis & Meramec River Railroad Company's lines within the City limits, to any point on said extension, should not exceed

two and one-half cents for persons under twelve years of age, and should not exceed five cents for persons over twelve years of age, for a continuous passage one way, which said power in complainant to charge for transportation was and is the essence of the contract between complainant and defendant.

And the said St. Louis & Suburban Railway Company was further required by the terms of said ordinance to issue to passengers who have paid regular fare and who may request the same, the necessary transfer ticket or tickets, entitling such passenger to immediate continued passage from the point where the transfer is made, over said extension line and over said main line and its branches as the case may be.

And upon the further condition and as a consideration for the grant of the rights, privileges and franchises given by said ordinance, that it, the said Company, should keep the tracks between the rails and between the tracks and to the extent of 12 inches outside of each rail, in perfect repair as nearly on a level with said rails as practicable, and that the portion outside the rails and between the tracks should be of the same material, as the street over which it ran or crossed and between the rails of the same or better material to the satisfaction of the Street Commissioner. And that said space should be repaved and reconstructed by said St. Louis & Suburban Railway Company as often and whenever the City of St. Louis should by an ordinance direct the repairing or reconstruction of said streets, and that all curves, switches and railway crossings, spaces between the rails and one foot outside of the rails should be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

And upon the further condition and in consideration of the rights and franchises granted by said ordinance, that it, said St. Louis & Suburban Railway Company, its successors or assigns should beginning two years from the approval of said ordinance, pay to the Treasurer of the City of St. Louis, for account of said City, on the last day of December of each year, for a term of 5 years, the sum of $1,000 and from that time up to the year 1920, the sum of $2,000 per annum, and thereafter until the expiration of the rights and franchises granted by said ordinance, the sum of $4,000.00 per annum.

And it was further provided by said ordinance that any failure on the part of said St. Louis & Suburban Railway Company, its successors or assigns, to comply with the conditions and requirements of said ordinance, should work a forfeiture of all rights granted by the same, and should constitute a breach of the bond which by the terms of said ordinance, said St. Louis & Suburban Railway Company was required to give.

And it was further provided by section 8 of said ordinance No. 19,393, that all of the provisions of said ordinance No. 15,954, so far as the same were in force, should apply to the entire line of Railway of said St. Louis & Suburban Railway Company, including the extension, provided for in said ordinance No. 19,393, except so

far as the same might be modified by or be inconsistent with the provisions of said last mentioned ordinance.

And it was mutually agreed by and between the St. Louis & Suburban Railway Company and the said City of St. Louis,
11 by the terms of section 7 of said last named ordinance, that the said St. Louis & Suburban Railway Company should relinquish and surrender to said City, in part consideration of the rights, privileges and authority granted by said last named ordinance, the authority, license and permission given it by section 1, of ordinance No. 19,954, to construct and operate double tracks across the Wabash Railroad Company's tracks on Union Avenue, to a point 300 feet within Forest Park and that the southern terminus of its said tracks should be at a point on said Union Avenue in the northern line of the right-of-way of said Wabash Railroad. And that the acceptance of said ordinance No. 19,393, should be sufficient evidence of said relinquishment and release. And that said Railway Company should remove its tracks from the southern Terminus established by said last named ordinance to its then established southern terminus in Forest Park, within 90 days from the approval of said last named ordinance, and should restore the street to its former condition.

It was mutually agreed by the provisions of said section 7 of said ordinance No. 19,393, that section 9 of said ordinance No. 15,954, should be and was thereby repealed; such repeal not to take effect until the acceptance by said St. Louis & Suburban Railway Company of said ordinance No. 19,393, as provided by section 4 thereof.

And it was further mutually agreed by the provisions of said section 7, that in consideration of the repeal of said section 9 of ordinance No. 15,954, and in lieu of the requirements thereof, the said Railway Company should be required and it thereby agreed to cause to be graded, the alleys along its right-of-way, west of Vanderventer Avenue, and to build suitable retaining Walls, if necessary, for such alleys, east of Sarah Street, said walls to be
12 located so as not to interfere with the right of said St. Louis & Suburban Railway Company to occupy and use said alleys under the provisions of section 1, of ordinance No. 15,954; that said improvements were to be made according to plans and specifications, submitted to and approved by the Board of Public Improvements: Provided, however, that the said Railway Company should not be required to expend more than $25,000.00 for such improvements.

And it was further mutually agreed by the provisions of said section 7 that the said Railway Company should dedicate to public use and open and grade in lot 12, City block No. 3,754, an alley twenty feet wide, from Morgan Street to the alley which extends along the south side of said right-of-way.

And the said ordinance No. 19,393, was accepted by said St. Louis & Suburban Railway Company, and constitutes a contract between the said City and the said Company, which the said City has no right or authority to alter, impair or abrogate.

And the said lines of street railway authorized to be constructed by said last mentioned ordinance, were long ago constructed by said

St. Louis & Suburban Railway Company and have ever since been maintained and operated, continuously by said St. Louis & Suburban Railway Company, and all the conditions, and requirements of the aforementioned ordinance No. 19,393, have been kept by said St. Louis & Suburban Railway Company, and all the payments required by the said ordinance to be made by it, have been made as and when the same respectively became due, and the complainant hereto attaches and makes part of this bill, the said ordinances Nos. 15,547, 15,954, 19,350 and 19,393, marked respectively Exhibits "A," "B," "C" and "D."

8. This complainant shows that by the provisions of the
13 several ordinances in this bill of complaint hereinbefore mentioned and set forth, the said St. Louis & Suburban Railway Company is restricted in its charge for transporting passengers over its lines of railway in said City of St. Louis to five cents, for each passenger above the age of 12 years, and to 2½ cents for passengers under 12 years of age.

9. And this complainant shows that by the provisions of said ordinance No. 19,393, it is required to operate the street railways in the City of St. Louis, owned and operated by it, substantially as one system, and it is provided in and by said ordinance, that transfers shall be given so as to transport passengers by a continuous trip from any point on the system to any other point on the system and such transfers are so given by complainant free of any charge additional to the charge of five cents or of 2½ cents, originally paid by the passenger.

10. And this complainant shows to the Court that the several sums required by them to be paid under the provisions of the various ordinances hereinbefore set forth, the construction, re-construction, paving, repaving, repairing and maintaining the spaces in the streets used by them, required by them to be done as hereinbefore set forth, by the several ordinances aforesaid, the limitations imposed by said ordinances upon the rate of fare which may be charged by complainant for transfer and transportation over its said lines of street railway, and the requirement for the giving of passengers transfers, as set out above, were and are the considerations exacted, demanded and stipulated for by the said City of St. Louis from this complainant, and its predecessors in right and title, for the rights granted by the said City, to construct, maintain and operate the said lines of street railway, and no other right or
14 privilege or revenue of any kind, and no other thing of value of any kind whatsoever was given or granted to the complainant or its predecessors in right and title by the said City, in consideration of the aforesaid requirements made of them; that to carry out said contract on its part the right in complainant to retain and use all its revenues is essential.

And the said ordinances constitute contracts and agreements between the said complain-t and the said City of St. Louis giving right, license and authority to the said St. Louis & Suburban Railway Company to maintain its said lines of street railway and operate cars over the same for the transportation of passengers, which said

contracts are irrevocable except by the agreement of the parties thereto, for the terms thereof.

11. And this complainant shows that the City of St. Louis had authority under its charter and laws and the constitution of the State to provide by contract through the form of ordinances enacted in that behalf for the construction, maintainance and operation of street railways, over the streets of the said City, and to prescribe the conditions thereof, and the considerations therefor; and that by the ordinances hereinbefore mentioned, the said City of St. Louis did contract with the said St. Louis, Central and Western Railway Company, its successors and assigns, and the said St. Louis & Suburban Railway Company, for the construction, maintenance and operation of the said several lines of railway, and did by said ordinances, prescribe the considerations to be paid therefor, which considerations have in all cases been paid.

12. And the complainant shows that the said City of St. Louis, the premises notwithstanding, by ordinance No. 21,087, herewith filed and made a part hereof marked "Exhibit E," approved March 25, 1903, assumed and enacted and provided that all persons,
15 co-partnerships, associations and companies, engaged in the business of transporting passengers from one point to another within the said City of St. Louis, for hire, on street railways, should pay the license collector of the said City of St. Louis, an alleged license for each and every car used by them in transporting passengers, which so called license was to be payable on the 16th days of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last days of the preceding March, June, September and December; the amount of such alleged license on each such car to be determined at a sum equal to one mill for each revenue or pay passenger, carried on such car, during the said preceding three months, ending as aforesaid. And that the said so called license so assuming to be authorized and imposed by the said ordinance No. 21,087, imposes a charge upon the gross receipts from the carriage of passengers exceeding 2 per cent. of the same, and no rights, privileges, franchises or considerations of any kind whatsoever are granted by said ordinance in consideration of the charge so assumed to be imposed and no rights, privileges, franchises, or properties of any kind whatsoever are granted by the said ordinance, or may be acquired or held under the same, other than those already possessed by the complainant, under previous ordinances of and contracts with the said City.

And it is provided in the said ordinance No. 21,087, that every corporation, company, or association, required thereby to pay a street car license, shall provide for and equip each car used in the transportation of passengers, with a suitable register or indicator, capable of registering passengers to a number not less than 9,999, and upon which shall be rigistered in continuous numerical succession the number of passengers who have paid for transportation on said car.

16 And it is further provided that each of said corporations, companies, or associations shall make report of the number

of passengers carried by it, on each car daily, for the previous day, to the Register of the City of St. Louis, showing the number of paying or revenue passengers carried by it.

And it is provided by said ordinance, that every person, corporation, company or association, refusing or neglecting to make the report so provided for shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than $5.00 nor more than $500.00.

And it is provided by said ordinance that any person, company, corporation, or association which it is assumed is required to pay such street car change or license, and which shall fail or neglect to pay the same within ten days after notice from the license collector, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than $100.00 nor more than $500.00, and each day of such failure, neglect or refusal, shall constitute a separate offense.

And it is provided in said ordinance, that a failure, refusal or neglect to pay such so-called license for thirty days, after the same is by the terms of said ordinance payable, shall operate as a revocation of any existing or subsequent license, which said parties may have obtained to operate such street cars in said City.

And it is provided in said ordinance that nothing therein contained, shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein, from the payment of any sum agreed, assumed or required to be paid, by the terms of any special ordinance or agreement or contract,
nor as replacing or affecting the same in any way, nor shall
17 said ordinance be construed as impairing or affecting any license theretofore obtained.

13. And notwithstanding the premises, the said City of St. Louis is now demanding under pretense of authority of the said last named ordinance, of the complainant herein, that it shall pay to the said City of St. Louis on all revenue or pay passengers carried by it, the said sum of one mill for each revenue or pay passengers so carried over the lines of said railway owned by the said St. Louis & Suburban Railway Company, in the said City of St. Louis, which charge of one mill aforesaid impairs the contract herein set forth, made with complainant as herein stated and subtracts from the power of complainant to meet its obligations to defendant and the public under this contract.

13*a*. And this complainant shows that it is provided by the Constitution of the State of Missouri, which was adopted in the year A. D. 1875, in Article X, thereof among other things as follows, viz.:

"SECTION 1. Taxing Power, How Exercised.—The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

"SECTION 3. Taxing for Public Purposes Must be Uniform.—Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the terri-

torial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

18 "SECTION 4. Taxes in Proportion to Value.—All property subject to taxation shall be taxed in proportion to its value.

"SECTION 5. Railway Corporations, Taxed for What Purposes.—All railroad corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes, on the real and personal property, owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock.

"SECTION 10. General Assembly Shall Not Tax Municipalities, When.—The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

"SECTION 11. Rates For Local Purposes—Limits—How Increased for Schools and Erection Public Buildings.—Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars, and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For city and town purposes the annual rate

19 on property in cities and towns having thirty thousand inhabitants or more shall not, in the aggregate, exceed one hundred cents on the hundred dollars valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; and in towns having one thousand inhabitants or less, said rate shall not exceed twenty-five cents on the hundred dollars valuation. For school purposes in districts, the annual rate on property shall not exceed forty cents on the hundred dollars valuation: Provided, The aforesaid annual rates for school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are tax payers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation

herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city, or school district, voting at such election, shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for state and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census taken under the authority of the State, or of the United States; said restrictions as to rates shall apply to taxes of every
20 kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

13*b*. And it was provided by general law of the State of Missouri, in pursuance of the constitutional provisions hereinbefore set forth, as shown in Article VIII, of Chapter 149, of the Revised Statutes of Missouri for the year 1899, that railroad companies were to be assessed by the State Board of Equalization of the State of Missouri for all purposes of taxation, state, county and other municipal or local purposes, and that the taxes levied thereon should be levied in the manner by said law provided, to-wit, upon the cash value of all the property owned by such railroad company, return whereof was to be made to said Board of Equalization. And it was provided by the laws of the State of Missouri enacted in 1897, and found in sections 9353, 9354 and 9355 of the Revised Statutes of 1899, as follows:

"SECTION 9353. Street Car Companies to Make Statement.—On or before the first day of January in each year, the president or other chief officer of every street railroad company in every city of this state whose line is now or shall hereafter become so far completed and in operation as to run horse cars, electric cars, cable cars or cars propelled by any other device for the transportation of passengers, shall furnish to the state auditor a statement, duly subscribed and sworn to by said president or other chief officer, before some officer authorized to administer oaths, setting out in detail the full length of the line, so far as completed, including branch or leased lines, the entire length in this State, the length of double or side tracks, the length of such line located upon real estate to which such company may have title as right of way, real estate, the length of such
21 line located upon the public streets or thoroughfares of any city, together with all cars, motors, grip cars, live-stock, electric trolley wires, cables, cable conduits, power houses, stables and all other property, real, personal or mixed, used or leased on the first day of June, which may be used in or incident to the operation of such street railroad, the length of such line in each county, municipal township and city through or in which it is located, and the cash value of the several items embraced in the statement.

"SECTION 9354. Taxes to Be Levied.—The said property returned to the State auditor, as by section 9353 required, shall be subject to taxation for state, county, municipal and other purposes to the same extent as the real and personal property of private per-

sons, and the same shall be assessed, apportioned, certified and the taxes thereon levied and collected at the time and in the manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property.

"SECTION 9355. Purpose of Certain Sections.—It being the purposes of the two preceding sections to make the property of street railroads in cities assessable and taxable in the same manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property, all acts and parts of acts inconsistent or in conflict therewith, are hereby repealed."

13*c*. And it was provided by the laws of the State of Missouri, approved March, 1901, as follows:

"SECTION 1. The franchises (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and all other similar corporations owning, operating and managing public utilities, and of all quasi public corporations possessing special
22 and peculiar privileges and authorized by law to perform any public service (except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation.

"SECTION 2. The State board of equalization in cases of railroads, street railroads, bridges, telegraph, telephone companies and all other corporations whose property the state board of equalization is now or may hereafter be required to assess, and the county assessor in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporation, tangible and intangible, in this State, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessor's books, under the head of 'all other property.'"

13*d*. And it is provided by the laws of the State of Missouri, Section 9357, Revised Statutes A. D., 1899, that of the taxes levied upon the railroad and street railroad properties of the State and collected therefrom, each county, municipal township, city or incorporated town of the State shall receive its due share of the taxes levied and collected for municipal purposes, to-wit, the taxes levied
for municipal purposes upon the portion of the property
23 located within the municipality, with the due proportion of franchise value added; and the City of St. Louis had no right or authority to levy any taxes, public charges or burdens upon the property or business of this complainant, other than as provided by the general laws of the State of Missouri, hereinbefore referred to,

and the said City had no right to levy upon or demand or collect from this complainant any portion of its gross receipts, or to impose any *per capita* charge on the passengers transported by complainant, except as the same was done by the ordinances and contracts granting the rights to the complainant, or to its predecessors in right and title, to use the streets of the said City of St. Louis for street railroad purposes, and as a consideration for the grant of such rights.

14. And complainant shows that the said City of St. Louis pretends and claims that the said charge of one mill for each revenue or pay passenger assumed to be provided for and imposed by said ordinance Numbered 21,087 is required to be paid by complainant in addition to the several sums and taxes provided to be paid under the several ordinances granting to the St. Louis & Suburban Railway Company, and its predecessors in right and title, the right to construct, maintain and operate its lines of street railway in the said City of St. Louis.

15. And this complainant shows that the said ordinance No. 21,087, if by its terms it imposes such additional charge, is illegal, unconstitutional and void, because imposing a tax, charge or consideration for rights, privileges and franchises theretofore granted on the considerations aforesaid to and already possessed by the complainant.

And such ordinance is in violation of the provisions of the
24 Constitution of the United States, section 10, of Article 1 thereof, which provides that no State shall pass any law impairing the obligations of contracts; and is in violation of Article 14 of the Amendments to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which said ordinance does.

16. The complainant shows that said ordinance if it imposes a charge of one mill or any other sum upon each revenue passenger carried by the complainant over its lines of street railway in the said City of St. Louis, impairs the obligation of the contracts made by the several ordinances hereinbefore recited, and by imposing additional and heavy burdens and charges as a condition of using, enjoying or exercising the rights and franchises granted by said special ordinance and by assumed legislative enactment, deprives this complainant of its property without due process of law and withholds from it the equal protection of the law.

17. And this complainant shows that the said so called license charge assumed to be imposed by the said ordinance No. 21,087, is not a license fee, but is an additional unequal charge and compensation assumed to be and is arbitrarily exacted from this complainant as a consideration for rights and franchises already granted to it by contracts with the City of St. Louis, and paid for by complainant in accordance with the provisions of said contracts.

18. And this complainant shows that said St. Louis & Suburban Railway Company, purchased the franchises and properties and constructed the lines of railway hereinbefore mentioned, upon the faith

of the inviolability of the said contracts between the said com-
25 pany and its predecessors in right and title, and the said City of St. Louis, and the bonds and stocks in large amounts of the said St. Louis & Suburban Railway Company were negotiated and are now held by many persons, who acquired the same on said faith, and the value of the properties, rights, franchises and privileges of said company, and the fixed right of complainant to retain and use all its revenues and all its bonds and stocks, will be greatly impaired and depreciated, if said ordinance No. 21,087 is enforced, according to its terms as asserted by the said City of St. Louis, and complainant's right to retain and use all said revenues be denied.

19. And this complainant shows that the said City of St. Louis intends and threatens to and will unless prevented by the interposition of this Honorable Court, deny to complainant the equal protecting of the law and assert the said ordinance No. 21,087, against this complainant as imposing a present and existing charge upon it of one mill for every revenue passenger carried by it, and thereby cast a cloud upon the title of the properties of this complainant, greatly impairing its credit.

And the said ordinance, if enforced, according to its terms, will discriminate against complainant, and deprive this complainant of revenue amounting to many thousands of dollars per annum, which are absolutely required for the purposes of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it, and to the proper discharge of the obligations imposed upon it by the several special ordinances hereinbefore set forth, and its obligations to pay its debts.

And the said city intends and threatens and will unless prevented by the interposition of this Honorable Court, institute numerous vexatious proceedings to compel/ plaintiff to comply with the
26 provisions of said ordinance No. 21,087, in the form of suits to recover the penalties prescribed by said ordinance and by suits to forfeit other franchises, rights and privileges acquired and held under the provisions of the several special ordinances hereinbefore set forth, and as a result, complainant will be subjected to great loss, damage, hinderance and annoyance in the conduct of its business, which it is entitled to carry on without such proceeding, suit, annoyance, hinderance loss and damage, and will be greatly impaired in its ability to properly conduct the services assumed by it, and imposed upon it by the several special ordinances above mentioned.

All of which actings and doings and threatened actings and doings of the said City of St. Louis are contrary to equity and good conscience, and will inflict irreparable damage upon complainant, and inasmuch as complainant is without remedy, except in a Court of Equity, and to the end that the complainant may have the relief to which it is entitled, and that the said defendant may answer the premises but not upon oath or affirmation, answer upon oath or affirmation being hereby expressly waived by complainant, may it please Your Honors to grant unto complainant a writ of subpœna to be directed to the City of St. Louis, commanding it at a certain

time and under a certain penalty to be therein named, to be and appear before this Honorable Court, then and there full, true, direct and perfect answer to make to all and singular the premises; and complainant prays that the said City of St. Louis may be perpetually restrained and enjoined from in any wise asserting or seeking to enforce said ordinance No. 21,087 against this complainant, and that said ordinance be declared to be null and void.

And complainant prays that a temporary restraining order issue out of and under the seal of this Honorable Court against
27 the said City of St. Louis, its officers, agents and attorneys, enjoining them, and each of them, from in any wise, by suit or otherwise, asserting or enforcing said ordinance No. 21,087, against the complainant, until the further order by this Court; and that upon the final hearing hereof, the said injunction to be made perpetual.

And complainant prays for such other and further relief as it may be entitled unto and as to the Court may seem *to* meet and proper.

JEFFERSON CHANDLER,
Solicitor for Complainant.

STATE OF MISSOURI, *City of St. Louis, ss:*

Julius S. Walsh, Jr., being first duly sworn on oath, deposeth and says, that he is the vice-president of the complainant company, the St. Louis & Suburban Railway Company; that he has read the foregoing bill of complaint of the said company, and knows the contents thereof, and that the matters and things therein set forth, are true as he verily believes.

JULIUS S. WALSH, JR.

Subscribed and sworn to before me this 18th day of January, 1904, by the said Julius S. Walsh, Jr.

My commission expires April 23d, 1907.

EDWIN W. MILLS,
Notary Public, City of St. Louis, Mo.

EXHIBIT "A."

[15,547.]

An ordinance authorizing the St. Louis Central and Western Railway Company to construct, operate and maintain a double
28 track passenger railway on, along and across certain streets, alleys and city blocks in the City of St. Louis.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto George L. Peabody, Henry E. Warner, George W. Parker, Joseph C. George, George A. Baker, Edward R. Feuerborn, Walter J. Blakely, H. C. Buhoup and Henry L. Edmunds, when in-

corporated under the laws of the State of Missouri, and in the name of the St. Louis Central and Western Railway Company, and unto said company, its successors and assigns, to lay down, construct, or acquire and to operate and maintain a double track passenger railroad, on, over and along the route prescribed in section 2 of this ordinance, and over and across all streets and alleys, city blocks and other places crossed or intersected by said route, together with all necessary curves, switches and sidings.

SEC. 2. The railroad authorized by section 1 of this ordinance shall begin on Locust street, at its intersection with Sixth street, and run thence west with double track on Locust street on the present tracks or roadbed of the St. Louis Cable and Western Railway Company to Thirteenth street, thence north on Thirteenth street to Lucas avenue, thence west on Lucas avenue to Fourteenth street, thence north on Fourteenth street to Wash street, thence west on Wash street to its intersection with Easton avenue, thence over and across Easton avenue into Franklin avenue at its junction with Leffingwell avenue, thence west on Franklin avenue to a point about one hundred and fifty feet east of Grand avenue, thence curving through city block 1,063 and across Grand avenue into Morgan street on
29 the west side of Grand avenue, thence west on Morgan street to the present terminus of the cable division of the St. Louis Cable and Western Railway Company, thence curving northwestwardly through city block 3,754 to the alley on the south side of the roadbed of the narrow gauge division of the St. Louis Cable and Western Railway Company; thence westwardly through said alley and over and across all intervening streets, highways and private property in a line with said alley to Taylor avenue; thence over and across Taylor avenue into city block number 3,761, and thence by the most practicable route into Richmond place, at a point about three hundred feet west of Taylor avenue; thence westwardly on Richmond place to Walton avenue; thence over and across Walton avenue through city block number 3,762, over and across Bayard avenue, through city block number 3,763, over and across Lay avenue, through city block number 3764, over and across Aubert avenue, through city block number 3,765, over and across Kingshighway into Morgan street on the west side of Kingshighway, thence westwardly on Morgan street to Union avenue, and thence south on Union avenue to the railroad track of the Wabash Western Railway Company, which is at or near the north line of Forest Park; and if said grantee, its successors or assigns, shall at any time succeed in obtaining the right of way over the private lands west of Union avenue and adjacent to Forest Park, its tracks may be deflected by easy curving out of Union avenue and into such lands, and *that in* event its tracks and railroad may be projected, extended, constructed and operated over the track or tracks of the Wabash Western Railway Company and over all intersecting streets and alleys on an elevated structure, into Forest Park at a point west of the superintendent's house and north of the most northerly driveway, so that no roadway in the park will be crossed or obstructed by them;
30 such terminal point to be determined by the Board of Public Improvements, the elevations of such elevated structure over

all intersected streets and alleys, if any, and the plan by which the deflection from Union avenue and into the parks is to be made, as well as the point of deflection to be submitted to and approved by the Board of Public Improvements before the work is done, and when approved by the Board of Public Improvements, the work shall be done in strict compliance with the plan so approved; provided further, that the St. Louis Central and Western Railway Company, its successors and assigns, may maintain the wheel in Sixth street, on which the cable of the railroad now in Locust street runs, where it is now placed; but the most eastern switch shall be taken up and thrown far enough west to enable cars to be switched thereon from one track to another without projecting beyond, or east of the west building line of Sixth street, and said railway company agree that under no circumstances shall its cars at any time project east of the building line on the west side of said Sixth street.

SEC. 3. The power to be used in the propulsion of the cars of said St. Louis Central and Western Railway Company, its successors and assigns, shall be cable underground or electricity. The electricity, if adopted, to be carried either by storage battery or by conduit under ground or at the election of the company, through overhead wires by the overhead wire system, on ornamental iron poles, or such other as may be permitted by the Board of Public Improvements. The poles to be placed either at the curb-stone along the route, on either side, or between the tracks of the railway company, as may be determined by the Board of Public Improvements, either for the whole line or for parts thereof, as may in the judgment of the Board be most desirable in the interest of the public; but until authorized by future legislation electricity shall not be used on that part
31 of *of* the line of said railroad east of 22nd street. For the purpose of changing from grip to motor cars, and vice versa, at this point, said company its successors and assigns, are authorized to lay down, construct and operate and maintain all necessary and convenient switches in the intersecting street at its power house, both north and south of the main line, not, however, to exceed one hundred and fifty feet in length either way. In case of emergency, horses may be used for motive power.

SEC. 4. If in the construction of this railroad under the authority of this ordinance, any water pipe or sewer is interfered with, so as to require the same to be relaid or repaired, all such work shall be done by the proper city department, and the total cost or expense thereof shall be paid by said railway company, its successors or assigns. If any public water pipe or sewer along which said railroad so to be constructed and operated shall, in consequence thereof, at any time be injured or damaged by reason of the construction of said railway thereon, make the repairing or reconstruction of such water pipe or sewer necessary in the opinion of the proper authority of the City of St. Louis, said railway company, its successors or assigns, shall make such repairs at its own cost and expense, and in order to insure a faithful compliance with the provisions of this ordinance relative to the repairing of streets, tracks, water and sewer pipes, the said railway company, its successors or assigns, shall

pay into the City Treasury the sum of five hundred dollars within thirty days after the acceptance of this ordinance, as a special fund for the purpose of defraying the cost of such repairs as the said railway company, its successors or assigns, may be liable to make, or which, in the opinion of the Street Commissioner, shall be necessary to be made. Whenever there shall be any deficit in the de-
32 posit above mentioned, in consequence of the part or whole of said deposit having been used for repairs by the Street Commissioner, the President of the Board of Public Improvements shall notify said company in writing, its successors or assigns, that such deficiency exists, and a failure to make such deficiency good by said railway company, its successors or assigns, within ten days after said notice shall have been given, shall be deemed a misdemeanor, and upon conviction thereof before any Police Justice of the City of St. Louis said company shall be fined not more than twenty-five dollars for each day such deficiency shall continue.

SEC. 5. Said railroad and its appurtenances shall be maintained in good order by said company, and said railroad, between Sixth and Locust streets and Forest Park, shall be operated between the hours of five o'clock a. m. and twelve o'clock midnight, and the cars shall be run thereon between the hours of five o'clock a. m. and nine o'clock a. m. at intervals not greater than five minutes, and between nine o'clock a. m. and five o'clock p. m. at intervals not greater than seven minutes, and between five o'clock p. m. and seven o'clock p. m. at intervals not greater than five minutes, and between seven o'clock p. m. and twelve o'clock midnight at intervals not greater than seven minutes. Any failure on the part of said company, its successors or assigns, to operate its road and run its cars as herein provided, shall be deemed a misdemeanor, and upon conviction thereof said company shall be fined for each offense, not more than one hundred dollars, and said company shall not run its cars at a greater rate of speed than eight miles an hour between Sixth street and Channing avenue, nor greater than fifteen miles per hour between Channing avenue and its western terminus at Forest Park, and shall not charge for a single continuous passage one way, over its said line between its terminus at Sixth and Locust streets and its
33 terminus at Forest Park, more than the rate authorized by this ordinance, which shall be five cents for each ride one way for an adult, or every person over the age of twelve years, and two and a half cents for a child under twelve years of age. Tickets for the use of children under twelve years of age shall be sold in lots of not less than ten for twenty-five cents.

SEC. 6. Within sixty days after this ordinance shall become a law, said company shall file with the City Register its written acceptance of the provisions hereof and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties to be approved by the Mayor and Council, conditioned that said company shall observe all the terms and conditions of this ordinance, and shall hold the City of St. Louis harmless from the payment of all damages and costs by reason of the construction, operation or maintenance of said railroad, which bond shall be renewed from

time to time whenever demanded by the Mayor, and whenever a new bond shall be demanded and given and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be cancelled and returned to the makers and the new bond filed with the Register of the city. Within six months from the date of such acceptance said St. Louis Central and Western Railway Company, its successors and assigns, shall in good faith begin the construction of said line of railroad, and within two years from the date of such acceptance, shall have its cars in operation from its terminus at Sixth and Locust streets to the terminus at Forest Park, and the terms of this franchise shall then exist in favor of said railway company, its successors or assigns, for a period of forty-five years. And unless said company shall commence and complete its road to its western terminus at or near Forest Park, as herein provided, in the manner and at the time by this ordinance
34 provided the rights and privileges hereby granted by this ordinance shall cease and become void.

SEC. 7. Before constructing the railroad provided for, or any part thereof, the said railway company, its successors or assigns, shall file in the office of the Board of Public Improvements of the City of St. Louis, an accurate plan of the location of its tracks and a profile of the same, and should the Board of Public Improvements direct any change in the plan and profile, not inconsistent with the general provisions of this ordinance, such change or changes shall be made by said company, its successors or assigns, and after said plans and profiles have been agreed upon, the work of construction shall be begun.

The laying of tracks along or across streets and alleys shall be done so as not to unnecessarily interrupt or interfere with travel thereon, and shall be done under the direction and to the satisfaction of the Board of Public Improvements. The said railway company shall keep the streets between the rails and between the tracks, and to the extent of twelve inches outside of each rail, in perfect repair as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street itself, and between the rails of the same or better material, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the repairing or reconstruction of said street; and provided further, that at all curves, switches and railway crossings, the space between the tracks and between the rails and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner. Said railway company shall construct its tracks with flat steel rails of pattern described and provided by general ordinance of the City of St. Louis.

35 SEC. 8. In consideration of the rights and franchises granted by this ordinance, said St. Louis Central and Western Railway Company, its successors or assigns, shall, beginning three years from the approval of this ordinance, pay to the Treasurer of the City of St. Louis, for account of the city, on the last day of

December of each year, for the term of five years, the sum of one thousand dollars, and for the further period of five years the sum of two thousand dollars per annum, and from that time until the expiration of the rights and franchises granted by this ordinance, the sum of four thousand dollars per annum.

SEC. 9. If at any time the St. Louis Central and Western Railway Company its successors and assigns, shall acquire the right of way, roadbed, tracks and franchises of the St. Louis Cable and Western Railway, or any part thereof, then and in that event, such right or rights of way, railroad and franchises so acquired may be operated in connection with the railroad authorized by this ordinance, and may be maintained and operated by said St. Louis Central & Western Railway Company, its successors and assigns, free from the penalties, burdens and obligations imposed thereon by ordinances of the City of St. Louis, numbered twelve thousand eight hundred and fifty-two and thirteen thousand two hundred and eighty-two; and said St. Louis Central and Western Railway Company, its successors and assigns, may lay down and maintain all necessary connections by switches and otherwise between said railroad and right of way so to be acquired, and the railroad authorized by this ordinance.

Approved March 28, 1890.

EXHIBIT "B."

[19,954.]

36 An ordinance authorizing the St. Louis and Suburban Railway Company to acquire, construct, operate and maintain a double track passenger railroad on, along and across certain streets, alleys and city blocks, in the City of St. Louis, and to operate its line of railroad by cable or electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto the St. Louis and Suburban Railway Company, its successors and assigns, to acquire all the rights, franchises, immunities, privileges and concessions heretofore granted unto the St. Louis Central and Western Railway Company, its successors and assigns, by Ordinance Number 15,547, of the City of St. Louis, approved March 28th, 1890, except as by this ordinance is otherwise specially provided and excepted and when said St. Louis and Suburban Railway Company shall have acquired the same, it may acquire or construct, and may operate and maintain a double track passenger railroad on, over and along any part or parts thereof, and for the purpose of conveniently connecting the different portions of the tracks which it is authorized by this ordinance to operate, it may in addition, construct, operate and maintain a double track passenger railroad from a point at or near the present terminus of the cable tracks on Morgan street, by the most feasible route over Morgan street, into City Block Number 3754 of the City of St.

Louis, to a point on the roadbed or right of way of the steam division of what was formerly the St. Louis Cable and Western Railway Company's railroad, now owned by the St. Louis and Suburban Railway Company, distant not more than six hundred and twenty feet west of the west line of Vandeventer avenue; and may also construct, maintain and operate a double track passenger railroad on Union avenue from the point where the said steam division
37 intersects Union avenue southwardly, on, over and along said Union avenue to a point three hundred feet inside of Forest Park to a point to be selected by the Board of Public Improvements, and may also construct, maintain and operate a double track passenger railroad from the intersection of said Union and Finney avenues, eastwardly on said Finney avenue to the aforesaid roadbed or right of way of said steam division where the same now crosses said Finney Ave.; and the said St. Louis and Suburban Railway Company, its successors and assigns, may also construct, maintain and operate a double track passenger railroad over the whole of the route now occupied by any of the tracks of what was formerly known as the St. Louis Cable and Western Railway Company excepting the spur track to the old depot site near Olive street herein mentioned, and now owned and operated by the St. Louis and Suburban Railway Company; and it may occupy and use with its tracks, roadbed and appurtenances, from its present depot near Vandeventer avenue to the west line of Taylor avenue, in any alley or street now or hereafter established, for public use, three feet contiguous to the north line and seven feet contiguous to the south line of the present roadbed or right of way of the present steam division of said railroad, which is now owned and operated by said St. Louis and Suburban Railway Company; and said St. Louis and Suburban Railway Company may also occupy and use with its tracks, roadbed and appurtenances, between the west line of Taylor avenue and a point where the present line of said railway crosses the City limits in a northwesterly direction, in any alley or street now or hereafter established, five feet contiguous to and on each side of the present roadbed or right of way of said steam division now owned and operated by the St. Louis and Suburban Railway Company, and the use and occupation above described shall be in lieu of the
38 route authorized by Ordinance Number 15,547, in Richmond place, near Taylor avenue, westwardly through Richmond place, and intersecting and crossing the streets and city blocks to King's Highway; thence through Morgan street, to Union avenue, also in lieu of the use of the entire alley on the south side of said roadbed or right of way, as included in the route granted in the foresaid Ordinance Number 15,547; and the said St. Louis and Suburban Railway Company may also construct, maintain and operate all curves, switches, sidings and connections, and may make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its tracks along the route which is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the present gauge of the cable division of said railway, or the

gauge established by general ordinance for street railroads in the City of St. Louis; but nothing contained in this ordinance shall be so construed as to give any right to said St. Louis and Suburban Railway Company to operate or change the gauge of the spur track now running from the present depot on Morgan street near Vandeventer avenue to the old depot site near Olive street and Cabanne avenue, it being the intention, as soon as possible, to discontinue the existence of said spur track and the running of trains thereon.

SEC. 2. Said St. Louis and Suburban Railway Company, its successors and assigns, may operate its railroad along the route authorized herein by cable laid under ground, or by electricity, either by the storage battery, the conduit underground, or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient to the use of electricity as a motive power, may be erected and placed either between the tracks of said railroad or along the curbs of all streets, on, over,
39 across or along which said railroad may at any time be operated, under this Ordinance or the aforesaid Ordinance No. 15,547, except as by this ordinance is otherwise specially provided or excepted, and along the line of the right of way as established by this Ordinance between Vandeventer avenue and a point where said railroad crosses the city limits, said poles to be not less than twenty feet above the surface of the streets and alleys, and to be of such form and material and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; but in no case shall the poles be placed between the tracks on any street east of Vandeventer avenue, and said St. Louis and Suburban Railway Company shall have the right to make all needful and convenient changes from time to time by the construction and erection of all needful and convenient curves, trenches, excavations, sewer connections, cable and machinery, poles and wires, in any of the streets or alleys in, along, over or across which its railroad may be constructed, maintained or operated, provided that said work shall be done in accordance with plans approved by said Board of Public Improvements.

But said railway company shall cause the grade of its roadbed and tracks to conform to the grades of the streets now or hereafter established at all points where said railroad crosses any of the streets of the City of St. Louis, and when that part of its line of railroad between its present depot near Vandeventer avenue and its terminus at Sixth and Locust streets shall be operated by electric power, said company shall cause the present slots between the rails of its tracks to be closed, and the surface of the streets between the rails of said tracks to be put into condition satisfactory to the Board of Public Improvements.

SEC. 3. The St. Louis and Suburban Railway Company
40 shall commence the work of construction within six months after the approval of this ordinance, and have the entire work completed, and have the railroad authorized herein in full

operation in the transportation of passengers in cars propelled in continuous passages by cable or electric power, within two years form the approval of this ordinance, and thereafter no cars shall be propelled on any part of its lines of railroad as herein authorized by steam locomotives. And from and after the expiration of the two years aforesaid, the St. Louis and Suburban Railway Company, its successors and assigns, shall run passenger cars propelled by cable or electricity over its lines of railroad every day in the year during the life of this franchise as follows: On its main line from Sixth and Locust streets to Well's station from six o'clock. a. m. to eight o'clock a. m., at intervals not exceeding ten minutes; and from eight o'clock a. m. to ten o'clock a. m., at intervals not exceeding five minutes; and from ten o'clock a. m. to four o'clock p. m., at intervals not exceeding ten minutes; and from four o'clock p. m. to seven o'clock p. m., at intervals not exceeding five minutes; and from seven o'clock p. m., to ten o'clock p. m., at intervals not exceeding ten minutes, and from ten o'clock p. m., until twelve o'clock midnight, at intervals not exceeding fifteen minutes; and it shall also run a special train starting at Well's Station at five-thirty a. m., running eastwardly to Sixth and Locust streets; and on the branch line running to Forest Park, it shall run its cars at intervals not exceeding ten minutes from six o'clock a. m. to twelve o'clock midnight. East of Grand avenue it shall not run its cars at a speed greater than ten miles an hour, nor greater than twenty miles an hour west of Grand avenue on its main line, nor greater than fifteen miles an hour on its branch road to Forest Park. The failure of the said Railway Company, its successors or assigns, to have its lines of railroad authorized herein in full operation within
41 two years from the approval of this ordinance as above required, or the failure to maintain it in effective operation, and to run its cars by cable or electricity, or the attempt by said Railroad Company, its successors or assigns, to propel cars on any part of said railroad by steam locomotives after the lapse of the two years aforesaid, shall *ipso facto* work immediately a complete and absolute revocation of this Ordinance and forfeiture of all the privileges, rights and franchises granted in this Ordinance the same as if it had never been passed. The temporary suspension or the temporary use of horse power in drawing cars in the event of the derangement of the machinery or other extraordinary emergency shall not be deemed a violation of this Ordinance. The fare from any point or station on the main line or branch of this railway to any point on its lines as herein authorized to be constructed and operated shall not exceed two and one half cents for persons under twelve years of age, and not exceed five cents for persons over twelve years of age for a continuous passage one way.

SEC. 4. Within sixty days after this ordinance shall become a law said St. Louis and Suburban Railway Company, its successors and assigns, shall file with the City Register its written acceptance thereof, and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties to be approved by the Mayor and Council, conditioned that said Company shall ob-

serve all the terms and conditions of this Ordinance, and all general Ordinances now in force or that may hereafter be passed in reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs, by reason of the construction, operation or maintenances of said railroad, which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond shall be demanded and
42 given and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be cancelled and returned to the makers and the new bond filed with the Register of the city.

SEC. 5. The bond required by this ordinance, as aforesaid, shall be in lieu of any bonds required by said Ordinance Number 15,547, or by the Ordinances Number 12,852, and Number 13,282, but the said St. Louis and Suburban Railway Company shall construct, operate and maintain its railroad subject to the obligations and regulations, and with all the rights, privileges, immunities, and exemptions in said Ordinance Number 15,547 contained, except as by this Ordinance is otherwise specially provided, or excepted, and not inconsistent with the provisions of this Ordinance and free from all penalties, burdens and obligations, except such as are imposed by this Ordinance and by the aforesaid Ordinance Number 15,547, provided that when said St. Louis and Suburban Railway Company, its successors and assigns, shall have acquired the rights, franchises, privileges and immunities granted to said St. Louis Central and Western Railway Company by said Ordinance Number 15,547, the said St. Louis and Suburban Railway Company, its successors and assigns, shall have the option to construct maintain and operate its tracks on all or any portion of the route described in said Ordinance Number 15,547, excepting the right to occupy and use that part of the route authorized in said Ordinance Number 15,547 on Richmond place and Morgan street as herein provided in Section One, also excepting the right to use the alley on the south side of the roadbed of the narrow gauge or steam division of the former St. Louis, Cable and Western Railway Company, between its depot near Vandeventer avenue, Morgan street and Taylor avenue, as provided in Ordinance Number
43 15,547, excepting the seven feet thereof authorized in Section One of this Ordinance, which seven feet may be used by this company as therein provided. Nothing in this section shall be so construed as to relieve the St. Louis and Suburban Railway Company from any obligation in regard to the amount of money to be paid to the City of St. Louis under the provisions of Ordinance Number 15,547.

SEC. 6. The right to use the three feet contiguous to the north line and seven feet contiguous to the south line of the present roadbed or right of way of said steam division of said railroad from its present depot near Vandeventer avenue to the west line of Taylor avenue, and also the right to use five feet contiguous to and on each side of the present roadbed or right of way of said steam division of said railroad between the west line of Taylor avenue and a point

where said railroad crosses the westerly City Limits in any alley or street now or hereafter established, as granted by this Ordinance, shall cease and terminate whenever said St. Louis and Suburban Railway Company, its successors and assigns, shall cease to use, as motive power for the moving of its cars, electricity or cable power, as in this ordinance is authorized and required.

SEC. 7. No freight depot, coal yard, lumber yard, stock or cattle yard shall be established, erected or maintained by this company, its successors or assigns, anywhere along the lines of its railroad in the City of St. Louis, nor shall any freight or cattle cars be run on any part of its railroad in the City of St. Louis, nor shall any cattle, stock, or freight be carried thereon after the road is ready for operation by cable or electricity, and in no event after the lapse of two years from the approval of this ordinance, excepting freight required for the construction, maintenance and operation of said railroad, and excepting family supplies (excluding coal), for the
44 use of persons living on or near the line of said railway, which may be carried on said road west of Vandeventer avenue, but not east of said avenue. Any violation of the provisions of this section by said company, its successors or assigns, shall work a forfeiture of all the rights, franchises and privileges in this ordinance granted.

SEC. 8. The said railway company shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail in perfect repair as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street over which it runs or crosses, and between the rails of the same, or better material, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the repairing or reconstruction of said street; and provided, further, that at all curves, switches and railway crossings, the space between the rails, and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

SEC. 9. Said railway company hereby agreeing to construct a depot building and waiting-room to be located at the terminus of its tracks in Forest Park in accordance with the following conditions and provisions, to-wit: Said railway company, its successors and assigns, shall cause plans and specifications to be prepared for said depot building and waiting room by a skillful architect or architects, and to cost not less than twenty-five thousand dollars, which said plans and specifications shall be submitted to and shall be subject to the approval of the Board of Public Improvements, and when so approved said company, its successors or assigns, shall procure
45 bids for the construction of said depot building and waiting room from at least three responsible parties, which said bids shall be submitted by said company, to said Board of Public Improvements, and said Board shall accept the lowest of said bids; but no bids shall be accepted by said Board unless the same shall amount to at least the sum of twenty-five thousand dollars, and said

company, its successors or assigns, shall thereupon cause said depot building and waiting room to be constructed at its own cost and expense in accordance with said plans and specifications, and according to the terms of the contract so awarded by said Board of Public Improvements, and the construction of said depot building and waiting room shall be under the supervision of said Board of Public Improvements. Said depot building, when completed, shall become the property of the City of St. Louis, and be under the regulations of the Park Commissioners, subject, however, to the use of the said Railroad Company, as a passenger depot.

SEC. 10. This Ordinance and all the rights, privileges and franchises hereby granted shall continue in force for the term of forty-five years from the date of its approval.

Approved February 6, 1891.

EXHIBIT "C."

[19,350.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks from its present terminus on Locust street, near Sixth street, and construct a railroad over, along and across certain streets, in the City of St. Louis, and to operate its cars over and upon the tracks of certain other railroads, and to operate the same by electric power, and also authorizing the St. Louis and Meramec River Railroad Company to join with said St. Louis and Suburban Railway Company in said construction, and to maintain and operate its cars over the same tracks and route with electric power, and authorizing said companies to operate ambulance and funeral cars and carry household supplies, and prescribing conditions for the rights hereby granted.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company and the St. Louis and Meramec River Railroad Company, their successors and assigns, are hereby authorized and empowered to extend the tracks of the St. Louis and Suburban Railway Company and construct, operate and maintain their respective lines of railway as follows: Beginning at a point in the south track of the St. Louis and Suburban Railway Company on Locust street, near the intersection of Sixth street, thence eastwardly with a single track curve on Locust street and Sixth street, connecting with the track of the Union Depot Railway Company on Sixth street; thence southwardly, over, along and upon said track of the Union Depot Railway Company on Sixth street to a point where the tracks of the Southern Electric Railroad Company connect with the tracks of said Union Depot Railway Company on Sixth street, near the north side of Pine street; thence south on and along said Sixth street, over and upon the track of the South-

ern Electric Railroad Company to a point near Elm street with the right to cross all intervening streets and railroad tracks; thence eastwardly with a single track curve connecting with the south track of the St. Louis Railroad Company on Elm street; thence east on Elm street over and upon the south track of said St. Louis Rail-
47 road Company to its terminus on Elm street near Broadway; thence east on Elm street with a single track over and across the tracks of the St. Louis Railroad Company on Broadway to the east line of Broadway; thence east on Elm street to the west line of Fourth street with a double track which may be used for such switching and standing of cars as may be incidental and necessary to the regular business of said companies; thence with a single curve track to connect the south track on Elm street with the east track of the People's Railway Company on Fourth street; thence north over and upon said east track of the People's Railway Company to Locust street; thence west with a single curve track on Fourth and Locust streets and across the west track of said People's Railway Company to a connection with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street; thence west over and upon said north track, and across the tracks of the St. Louis Railroad Company on Broadway to a point near Sixth street; thence west and across the tracks of the Cass Avenue and Fair Grounds Railway Company and of the Union Depot Railway Company on Sixth street to a connection with the north track of said St. Louis and Suburban Railway Company on Locust street near Sixth street; provided, however, that said companies may build, with proper curve connections with their track provided for above on Elm street and with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street near Fourth street, a temporary single track on Fourth street betwen Elm and Locust streets, east of and as near as practicable to the east track of the People's Railway Company, the east rail of said temporary track to be distant at least ten feet from the east curb of the street; and maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Company have been so recon-
48 structed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company upon the east track thereof as provided above in this section, between Elm and Locust streets; said companies shall be required, and they hereby agree, to remove such temporary track and restore the street to its former condition, to the satisfaction of the Street Commissioner, whenever the tracks of the People's Railway Company are reconstructed as above provided, and said companies are able to begin the operation of their cars on the east track thereof.

If said companies fail to remove such temporary track when they are able to begin the operation of their cars upon the east track of the People's Railway Company, after the tracks of said last named company shall have been reconstructed as above provided, such failure shall work a forfeiture of all the rights and privileges granted

by this ordinance and shall constitute a breach of the bond given under the provisions of this ordinance, and the city shall remove such temporary track and restore the street at the cost of said companies, such cost to be recovered by the city against the bond given under the provisions of this ordinance.

SEC. 2. Said lines of railroad hereby authorized shall be operated by electric power, either by storage battery, conduits underground, the overhead wire system, through overhead and supplementary ground circuits, or any other electric system. Said companies may erect iron poles to carry overhead wires. The feed wires shall not be less than twenty feet above the surface of the street, said poles to be placed along the curbs of streets at such distances apart as may be deemed necessary for the safe and proper operations of said railroads, and the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company may also construct, maintain and operate all curves, turnouts, switches, sidings, crossings, crossovers and connections, make all excavations which are reasonably necessary and convenient for the operation of their tracks along the route which they are by this ordinance authorized to use and occupy. The general plan, character and location of the poles shall be submitted to and approved by the Board of Public Improvements.

SEC. 3. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, may run their cars over said route as hereby authorized, at a rate of speed not to exceed ten miles per hour.

SEC. 4. Whenever any of the streets through which the tracks of said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, authorized by this ordinance to be reconstructed, are laid, shall be repaired or reconstructed, said companies shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed to the satisfaction of the Street Commissioner, and said companies shall cause the grade of the roadbed and tracks authorized by this ordinance to be constructed to conform to the grades now or hereafter established of the streets in which said tracks are laid, and at all points where said railroads cross any of the streets of the City of St. Louis.

SEC. 5. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, shall, within sixty days after the approval of this ordinance, file with the City Register their joint written acceptance of all the provisions hereof; and also their joint bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said companies, and each of them, jointly and severally, shall observe all the terms and conditions of this ordinance and all general ordinances of the City of St. Louis now in force,

or that may hereafter be enacted in reference to street railways, and that they shall hold the City of St. Louis harmless from the payment of all or any damages and costs which may be established against the City of St. Louis by reason or on account of the construction, operation and maintenance of said railroads, or either of them, or by reason of the failure of said railway companies, or either of them, to comply with all the terms and conditions of this ordinance; which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond is demanded by the Mayor, and given by said railroad companies, and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers, and the new bond filed with the Register of the city.

SEC. 6. Said companies may run United States mail, ambulance and funeral cars, and cars for the transportation of family goods and supplies (excepting coal) over the tracks hereby authorized.

SEC. 7. In consideration of the rights and privileges granted by this ordinance, said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, their successors or assigns, each year, until the expiration of the rights and privileges granted by this ordinance, pay to the Treasurer of
51 the City of St. Louis, for account of said city, the sum of three thousand five hundred dollars per annum, on the thirty-first of December of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

SEC. 8. The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

SEC. 9. This ordinance shall continue in force until February sixth, nineteen hundred thirty-six.

Approved April 5, 1898.

EXHIBIT "D."

[19,393.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks running north on Union avenue, and to construct, maintain and operate its double track electric railroad along and across certain other streets and highways in the City of St. Louis, and to operate its said extension railroad by electric power, and to relinquish its rights to operate a certain portion of its said line or railway already constructed and operated on said Union avenue, and in Forest Park, under Ordinance number fifteen thousand nine hundred and fifty-four of the City of St. Louis, and to repeal section nine of said last named ordinance; also to operate funeral and ambulance cars, and to carry household supplies, and prescribing conditions therefor.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company, its

lessees, successors and assigns, is hereby authorized and empowered to extend its double tracks running north and south on
52 Union avenue in said city, and to construct, maintain and operate a double track railroad, together with all necessary turnouts, switches, crossings, cross-overs, connections and loops, over, along and upon the streets, alleys and public places on the following route, viz: From a point where the railway or railroad of said St. Louis and Suburban Railway Company intersects Union avenue, being the most northerly point of its tracks, running and authorized to be constructed and operated north and south on said Union avenue, under ordinance number fifteen thousand nine hundred and fifty-four of said City of St. Louis; thence northwardly, with a double track, along and over said Union avenue, and across and along all intervening streets, alleys and public places to the Natural Bridge Road, thence over private property, or over and along Union avenue, whenever opened, to Bircher street; thence eastwardly on, over and along said Bircher street, and across and along all intervening streets, alleys and public places to Bernays avenue; thence northwardly on, over and along said Bernays avenue, across and along all intervening streets, alleys and public places to Florissant avenue in said city; with the right to make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its said tracks along said route; Also to construct, maintain and operate double tracks on Maple avenue from the western city limits, east on Maple avenue to a connection with the present tracks of said company at or near the point where said tracks cross Maple avenue, at or near the intersection of Maple and Hodiamont avenue.

SECTION 2. Said extension of said line of railroad, as herein authorized, in connection with and as part of its present line of road operated under said Ordinance number fifteen thousand nine hundred and fifty-four, shall be operated by electric power, said
53 operation, at the option of said St. Louis and Suburban Railway Company, its successors and assigns, to be by storage battery on the cars, or by wire or wires placed in an underground conduit or conduits, or by an overhead wire or wires supported by iron or steel poles, or of such other material as may be approved by the Board of Public Improvements of said city, under whose supervision all of said work is to be done. Said poles may be erected and placed either between the tracks of said railroad or along the curbs of all the streets on, over, across or along which said railroad may at any time be operated under this ordinance. The wires on said poles shall not be less than twenty feet above the surface of the street. The general plan, character and location of the poles and overhead wires will be submitted to and approved by the Board of Public Improvements.

Said railway company, its successors or assigns, shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the streets over which it constructs its said extension.

SECTION 3. The said St. Louis and Suburban Railway Company shall commence the work of construction of said extension within six months after the approval of this ordinance, and complete the same to the Natural Bridge Road within two years from said approval, and the balance of said road shall be completed within two years from and after the establishment of grade by the said City of St. Louis on the whole of said route and from and after the expiration of said two years last named, the said railway company, its successors and assigns, shall run passenger cars over its said extension of line of railway every day in the year during the life of this franchise, as follows: At intervals not exceeding ten minutes, from six o'clock a. m. to midnight. Said railway company shall not run its cars at
54 a speed greater than fifteen miles an hour on said extension of its route. The fare from any point or station on said extension of said railway to any point on the line of said extension, or to any point on its main or branch lines operated under the authority given by Ordinance number fifteen thousand nine hundred and fifty-four or to any point on the St. Louis and Meramec River Railroad Company's line of railroad within the city limits, or from any point on said main line and branches operated under said Ordinance number fifteen thousand nine hundred and fifty-four, or from any point on said St. Louis and Meramec River Railroad Company's line within the city limits to any point on said extension, shall not exceed two and one-half cents for persons under twelve years of age and shall not exceed five cents for persons over twelve years of age, for a continuous passage one way. And the said St. Louis and Suburban Railway Company shall issue to passengers who have paid regular fare, and who may request the same, the necessary transfer ticket, or tickets, entitling such passenger to immediate continued passage from the point where the transfer is made, over said extension line, or over said main line and its branches, as the case may be.

SECTION 4. Within sixty days after this ordinance shall become a law, said St. Louis and Suburban Railway Company, its successors and assigns, shall file with the City Register its written acceptance thereof and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said company will observe all the terms and conditions of this ordinance, and all general ordinances now in force, or that hereafter may be passed with reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs which may be estab-
55 lished against the said city by reason of the construction, operation and maintenance of said railroad, which bond shall be renewed from time to time, whenever demanded by the said Mayor, and whenever a new bond shall be demanded, given and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers and a new bond filed with the Register of said city.

SECTION 5. Said railway company, its successors or assigns, shall not allow any freight cars to be run over its lines, including this extension, excepting for the transportation of family goods and sup-

plies (excluding coal), and for the use of persons living on or near the lines of said railroad, said company may run cars to carry such family goods and supplies, also United States mail, ambulance and funeral cars, from any point on this extension to and from its station about five hundred feet west of Vandeventer avenue, at a point where it leaves Morgan street to connect with its private right-of-way.

SECTION 6. The said railway company shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail, in perfect repair, as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street over which it runs or crosses, and between the rails, of the same or better material, to the satisfaction of the Street Commissioner; and said spaces shall be repaved and reconstructed as often and whenever the city shall by an ordinance direct the repairing or reconstruction of said street; and provided, that all curves, switches and railway crossings, space between the rails and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

56 SECTION 7. The said St. Louis and Suburban Railway Company shall relinquish and surrender to said city in part consideration of the rights, privileges and authority herein granted, its authority, license and permission given it by Section one of Ordinance number fifteen thousand nine hundred and fifty-four, to construct and operate double tracks across the Wabash Railroad Company's tracks on Union avenue, to a point three hundred feet in Forest Park, and the southern terminus of said tracks shall be at a point on said Union avenue in the northern line of the right of way of said Wabash Railroad; and the acceptance of this ordinance, as provided by Section four hereof, shall be sufficient evidence of such relinquishment and release. Said railway company shall remove its tracks from said southern terminus established by this section to its present southern terminus in Forest Park, within ninety days from the approval of this ordinance, and shall restore the street to its former condition. Section nine of said Ordinance number fifteen thousand nine hundred and fifty-four shall be, and is hereby, repealed; such repeal, however, not to take effect until the acceptance of this ordinance, as provided by Section four hereof.

In consideration of the repeal of said Section nine of Ordinance number fifteen thousand nine hundred and fifty-four, and in lieu of the requirements thereof, the said railway company shall be required and hereby agrees to cause to be graded the alleys along its right of way west of Vandeventer avenue, and to build suitable retaining walls if necessary for such alleys east of Sarah street, said walls to be located so as not to interfere with the right of said company to occupy and use said alleys under provision of Section one of Ordinance number fifteen thousand nine hundred and fifty-four. Such improvements to be made according to plans and specifications submitted to and approved by the Board of Public Improve-
57 ments; provided, however, that the said railway company shall not be required to expend more than twenty-five thou-

sand dollars for such improvements. And said railway company shall also dedicate to public use and open and grade in lot twelve, City Block number three thousand seven hundred and fifty-four, an alley twenty feet wide from Morgan street to the alley which extends along the south side of its right of way.

SECTION 8. All of the provisions of said City Ordinance number fifteen thousand nine hundred and fifty-four, so far as the same are in force and apply to the present line of the St. Louis and Suburban Railway Company, shall continue in force and apply to the entire line of railway, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

SECTION 9. In consideration of the right and franchises granted by this ordinance, said St. Louis and Suburban Railway Company, its successors or assigns, shall, beginning two years from the approval of this ordinance, pay to the Treasurer of the City of St. Louis, for account of the said city, on the last day of December of each year, and for a term of five years, the sum of one thousand dollars, and from that time up to the year nineteen hundred and twenty the sum of two thousand dollars per annum and thereafter until the expiration of the rights and franchises granted by this ordinance, the sum of four thousand dollars per annum.

This ordinance and all the rights privileges and franchises hereby granted shall continue in force until February sixth, nineteen hundred and thirty-six.

SECTION 10. Any failure on the part of said company, its successors or assigns, to comply with the conditions and require-
58 ments of this ordinance, shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

SECTION 11. The St. Louis and Suburban Railway Company, in accepting this ordinance, agrees to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force or which may hereafter be enacted and applicable to its entire line of railroad or any part thereof.

Approved June 10, 1898.

Exhibit "E."

[21,087.]

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

Section One. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

59

Section Twenty-one Hundred and Thirty-four. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

Section Twenty-one Hundred and Thirty-five. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

Section Twenty-one Hundred and Thirty-five A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by

it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon
60 which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times
61 to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the

License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A
62 failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

[19,550.]

An Ordinance to Partially Improve Neosho Street Between Broadway and Michigan Avenue.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause Neosho street, between Broadway and Michigan avenue, to be partially improved by grading, preparing ground for the superstructure, laying on the roadway a sub-foundation of rough rock, twenty feet wide, and placing thereon a course of macadam, with a binding material and a top dressing of gravel, and making all proper connections and intersections with other streets and alleys.

63 SEC. 2. The sub-foundation of rough rock and the macadamizing shall be of limestone, the binding material shall be of loam, sand or macadam screenings, and a top dressing of gravel shall be used to cover the surface of the roadway.

SEC. 3. The grading shall be done in accordance with the directions of the Street Commissioner. The ground for the superstructure shall be prepared and the roadbed properly formed to a depth of fifteen inches below the intended surface of the roadway. On this roadbed there shall be placed a sub-foundation of rough rock, six inches deep and a layer of broken stone of macadam nine inches deep,

which shall be well compacted by rolling, after which the void spaces shall be filled with loam, sand or macadam screenings by flushing with water. On the surface thus formed there shall be spread a covering of gravel. The whole shall then be well rolled.

SEC. 4. The cost of preparing ground for the superstructure, subfoundation of rough rock, macadamizing, binding material, top dressing, rolling and all proper connections and intersections required, shall be charged as a lien upon the adjoining property fronting or bordering on the improvement herein provided for, and shall be paid by the owners thereof. When said work is completed, the President of the Board of Public Improvements shall compute the cost thereof, and levy and assess the same, as a special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf of the contractor, bills of such cost and assessment, accordingly, as required by law.

64 SEC. 5. The cost of the grading shall be paid by the City of St. Louis, and the sum of three hundred dollars is hereby appropriated on account thereof, payable out of the fund set apart for street improvements.

Approved November 25, 1898.

[19,954.]

An Ordinance to Reconstruct Alley in City Block Number Eight Hundred and Ninety-four.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause alley in city block number eight hundred and ninety-four from Eighteenth street to Nineteenth street, and between Market street and Chestnut street, to be reconstructed by taking up and removing the old pavement, preparing the ground for the superstructure, laying a roadway pavement of vitrified paving block on a concrete base and making all proper connections and intersections with other streets and alleys.

SECTION 2. The base shall be a bed of hydraulic cement concrete and the paving shall be the best quality of vitrified paving block, laid on a bed of sand.

SECTION 3. The old pavement shall be removed and the ground for the superstructure prepared to a depth of twelve and one-half inches below the intended surface of the roadway. On the roadbed a base of hydraulic cement concrete, six inches deep, shall be laid; on this base there shall be placed a pavement of the best quality of vitrified paving block. The blocks shall not be less than nine inches nor more than twelve inches long; not less than three and one-

65 half inches nor more than four and one-half inches wide; not less than five inches nor more than six inches deep; they

shall be set on edge on a bed of clean, coarse sand of sufficient depth to bring the upper surface of the blocks, after they have been well rammed, to the true surface of the pavement. The joints shall be completely filled with grout, composed of one part best Portland Cement to one part of sand.

SECTION 4. The cost of the foregoing work and all proper connections and intersections required shall be charged as a lien upon the adjoining property fronting or bordering on the improvements herein provided for and shall be paid by the owners thereof. When said work is completed the President of the Board of Public Improvements shall compute the cost thereof and levy and assess the same as special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptrolier, on behalf of the contractor, bills of such cost and assessment accordingly, as required by law.

Approved February 23, 1900.

And thereupon a subpœna in Chancery was issued in said cause, which subpœna, with the marshal's return thereon, is in words and figures as follows, to-wit:

66 *Subpœna.*

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, set:

In the Circuit Court of the United States in and for the Eastern Division of Said District.

The President of the United States of America, to City of St. Louis, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, on the first Monday of June next, at the City of St. Louis, then and there to answer the bill of complaint of St. Louis & Suburban Railway Company, a citizen of the State of Missouri, filed against you on the 23rd day of April, 1904; hereof fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 23rd day of April, 1904.

Issued at office, in the City of St. Louis, under the seal of said Circuit Court, the day and year last aforesaid.

JAMES R. GRAY, *Clerk.*

MEM.—The Defendant to enter its appearance in this suit in the Clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

JAMES R. GRAY, *Clerk.*

67 I certify that I executed this writ at the City of St. Louis in the above named district, on the 26th day of April, 1904, by delivering a true copy thereof as furnished by the Clerk to Rolla Wells, Mayor of the within named defendant Corporation, the City of St. Louis.

Marshal's Fees.

One service at $2.00	$2.00
Mileage, 1 mile at 6 cents	.06
Total	$2.06

WILLIAM L. MORSEY,
U. S. Marshal, Eastern District of Missouri.
By LOUIS WILD, *Deputy.*

And afterwards on the 2nd day of May, 1904, the defendant entered its appearance, which is in words and figures as follows, to wit:

Appearance.

No. 4987. Equity.

ST. LOUIS & SUBURBAN RAILWAY CO.
vs.
CITY OF ST. LOUIS.

The undersigned hereby enter appearance for defendant in the above entitled cause.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant.

And afterwards, to-wit, on the 1st day of June, A. D., 1904, there was filed in said cause an Answer, which said Answer is in words and figures as follows, to-wit:

(*Answer.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4987.

ST. LOUIS AND SUBURBAN RAILWAY COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

(Answer.)

68 Now comes the defendant in the above entitled cause and for its answer to the complainant's bill in equity, and show-

ing cause why no injunction or other relief prayed for should be granted, states:

(1.) This defendant denies each and every allegation in said complainant's bill contained, except as hereinafter specifically admitted.

(2.) Defendant admits for the purpose of this cause that the complainant is a corporation created by and existing under the laws of the State of Missouri, having its principal offices and place of business in the locality alleged in the complaint, and states that said complainant is engaged in the business of transporting passengers from one point to another within the City of St. Louis, for hire, on street railways.

(3.) Defendant further admits that it is a municipal corporation of the State of Missouri, situated in the Eastern Division of the Eastern District of said State, and states that it, the said city, is duly organized and possessed of its Charter, under and in pursuance of the provisions of the Constitution of said State as set forth therein in Article IX, sections 20 to 25 inclusive and amendments thereto.

(4.) Defendant further states that at all times mentioned in the complaint said Constitution (in Article XII, section 20) provided that:

"No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

(5.) Defendant admits that under Article X, section 1 of the Charter, it is and at all the times stated in complainant's bill was, empowered, through its Municipal Assembly, by ordinance,
69 to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right-of-way, or regulating and controlling them after their completion; and also had power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a *per capita tax* on the *passengers* transported, or an *annual tax* on the *gross receipts* of such railroad, or on *each car*, and that no street railroad should be incorporated or built in the City of St. Louis except according to the above and other conditions in such Charter, and in such manner and to such extent as provided by ordinance.

And defendant states that it is and was by section two of said Article X of its Charter empowered to regulate the time and manner of running cars, and the rates of fare on street railroads then or thereafter to be built, and the sale of tickets and exchange thereof between the several companies, and to tax the property of street railway companies in such manner as might be provided by law.

And that under section three of said Article X of said Charter it is provided that any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indispo-

sition and surrender thereby all chartered franchises as provided by ordinance.

And that by section five of said Article X of said Charter all street railroad companies are and were required to keep the street between the rails and to the extent of 12 inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails to be of the same material as the street itself.

70 That complainant took all and every franchise, right or privilege granted or conferred by any ordinance subject to all the foregoing powers, and that the provisions in ordinances referred to in complainant's bill requiring the same and similar obligations to repair are of no more effect than if they had been omitted, being the law at all events, and cannot operate as a consideration to the city.

(6.) Defendant further states that acting through its Mayor and Assembly by ordinance, it had (under its Charter, Article III, section 26, clause eleventh) sole power and authority to grant to persons or corporations the right to construct railways in the city, but at all times subject to the right to amend, alter or repeal any such grant in whole or in part, and to regulate or control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles. Defendant states that any and all privileges, rights, franchises or immunities granted or conferred on complainant or its assignors, were knowingly taken subject to the exercise of any of the powers herein set forth whenever defendant saw fit so to do.

(7.) And defendant states that having exclusive and plenary power under the Constitution, statutes, Charter provisions and laws of the State to grant or withhold its consent to the complainant and its assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did when complainant desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a

71 franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainant's bill, and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainant and its assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise *of* right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a *license fee* for the exercise of such right so conferred on the aforesaid conditions, nor

to require payment of a *general property tax on complainant's property.*

(8.) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainant's bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its Charter Article III section 26, clause fifth, by ordinance to *license, tax* and regulate street railroad *cars,* (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21087, approved March 25, 1903, (being the same the enforcement of which complainant seeks to enjoin) which is as follows, to-wit:

[21,087.]

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one
72 hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

Section One. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

Section Twenty-one Hundred and Thirty-four. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

Section Twenty-one Hundred and Thirty-five. All persons, co-partnerships, associations, corporations and companies embraced
in the foregoing section shall pay the License Collector a
73 quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of

April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number of figures shown on the said passenger register or indicator when said car was dis-
74 continued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday, or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporar-ly inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars

per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every Person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or
75 interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October, and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall
76 said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

(9.) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privileges conferred upon the complainant or any of its assignors; that the obligations assumed by complainant and its assignors in the respective ordinances conferring franchises, rights and privileges were in no sense *license fees* or *license taxes* upon *street cars*, but only conditions under which the city consented that said complainants and their assignors could obtain the valuable right to the use of its streets, and in no way operated to exempt complainant from the imposition of *license taxes* and *fees* for the exercise of their business and the rights conferred by said franchise. On the contrary

defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25.00 each year on each street car operated by any street car company and which license fee and tax complainant had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said company upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And defendant further states that when said complainant accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned,

77 and, that it at all times, and all the assignors of said company, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21,087.

And defendant specially denies that the amount required to be paid is as alleged by complainant "absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it and to the proper discharge of the obligations imposed upon it by the several special ordinances" by it set forth or cast a cloud on the title of the properties of complainant, which impairs its credit.

Defendant states that said *license fee or tax* is perfectly lawful and reasonable, and does not interfere with the conduct of complainant's business, but that if complainant is unable or indisposed to continue its said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790*a* of ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of its said franchises and chartered rights, which action complainant has declined to adopt, but on the contrary in open violation of said ordinance 21087, operates street cars and engages in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10.) Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies equally with complainant, and that it agreed on June 16, 1898, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinances 19392 and 19393 and referred to in said complainant's bill, and without which the

78 same would not have become effective, to accept all obligations therein imposed on said complainant, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways; and said respective assignors of complainant entered into similar agreements as a condition permitting them to assign such rights or franchises to complainant, wherein said assignors

and each of them agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

(11.) Wherefore, defendant having fully answered prays to be hence discharged without day and that complainant be required to pay its costs herein incurred.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant, the City of St. Louis.

And afterwards, to-wit: on the 2nd day of July, A. D. 1904, there was filed in said cause a Reply, which said Reply is in words and figures as follows, to-wit:—

(*Reply.*)

In the United States Circuit Court of St. Louis, Missouri.

United States Circuit Court, St. Louis, Mo.

No. 4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Replicant,
vs.
CITY OF ST. LOUIS, Defendant.

This replicant, the St. Louis & Suburban Railway Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendant, the City of St. Louis, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contain material or effectual in the law to be replied unto, confess, or avoid, or traverse, or deny, is true; all which matters and things this replicant is ready to aver, maintain, and prove, as this Honorable Court shall direct and humbly prays as in and by its said bill it hath already prayed.

JEFFERSON CHANDLER,
Solicitor for Replicant.

79 And afterwards, to-wit: on the 22nd day of December, A. D. 1904, there was filed in said cause a Stipulation, which said Stipulation is in words and figures as follows, to-wit:

(*Stipulation.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. In Equity.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Stipulation.

It is hereby agreed and stipulated by the defendant, the City of St. Louis, through its counsel, that the preliminary injunction granted by this Court on motion of the United Railways Company, of St. Louis, and the St. Louis Transit Company, be extended on motion of the St. Louis & Suburban Railway Company, and the St. Louis & Meramec River Railroad Company, so as to include the two last named complainants within the order granting a preliminary injunction restraining the City of St. Louis from enforcing an alleged ordinance No. 21087 against said complainants, the St. Louis & Suburban Railway Company and the St. Louis & Meramec River Railroad Company, or either of them, with same effect as if the order made had included said last named companies and no greater.

CHAS. W. BATES,
WM. F. WOERNER,
Counsel for the City of St. Louis.

And thereupon, to-wit: on the said 22nd day of December, A. D. 1904, there was filed in said cause a Motion for a Preliminary Injunction, which said Motion for a Preliminary Injunction is in words and figures as follows, to-wit:—

(*Motion for a Preliminary Injunction.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. In Equity.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

80 *Complainants' Motion for a Preliminary Injunction.*

Now come the complainants in the above entitled cause and move the Court to grant a preliminary injunction restraining and enjoining the defendant, City of St. Louis, its officers and agents, from in any wise asserting or seeking to enforce any of the provisions of the alleged ordinance of said City, No. 21087, assuming

to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents, and each of them, from in any wise, by suit, or otherwise, asserting or enforcing said alleged ordinance No. 21087 against complainants, until the further order of this Court in the premises.

And in support of said motion said complainants refer to their bill herein, and to the ordinances of the City of St. Louis recited in said bill.

JEFFERSON CHANDLER,
JOHN LIONBERGER DAVIS,
Counsel for Complainants.

And thereupon, to-wit: on the said 22nd day of December, A. D. 1904, the following among other proceedings were had and appear of record in said cause as follows, to-wit:—

(*Preliminary Injunction.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Preliminary Injunction.

The Court having fully considered complain-t's application for a preliminary injunction, doth order that said application be granted, and it is now

81 Ordered, adjudged and decreed by the Court, that the defendant, City of St. Louis, its officers and agents, be, and they are hereby enjoined and restrained, until the further order of this Court, from in any wise asserting or seeking to enforce any of the provisions of an alleged ordinance of the said City, numbered 21,087, assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or either of them, on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents, and each of them from in any wise, by suit or otherwise, asserting or enforcing said alleged ordinance numbered 21,087 against the complainants, or either of them.

ELMER B. ADAMS, *Judge.*

And afterwards, to-wit: on the 24th day of November, A. D. 1905, there was filed in said cause Testimony for complainant, which said

Testimony for Complainant is in words and figures as follows, to-wit:—

(*Testimony for Complainant.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. In Equity.

4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Testimony on behalf of Complainant in the above entitled cases taken by consent of parties before James R. Gray, as Special Examiner, at his office Room 342 Custom House Building, Eighth-Ninth-Locust-Olive Streets, St. Louis, Mo., beginning at 10:30 o'clock in the morning of Tuesday, the seventh day of November, A. D. 1905. It being agreed by the parties that this testimony may be used in either of the above entitled causes:

Appearances: Jefferson Chandler, Esq. for Complainants. W. F. Woerner, Esq., for Defendant.

Testimony.

E. P. SOMMERS, a witness on behalf of the Complainants,
82 after being duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. CHANDLER:

Q. Mr. Sommers, will you state your full name please?
A. Edgar P. Sommers.
Q. What relation, if any, have you to the St. Louis & Suburban Railway Company?
A. I am Secretary and Treasurer.
Q. How long have you been secretary and treasurer?
A. About three years.
Q. What relation, if any, do you have to the St. Louis & Meramec River Railroad Company? Or Railway Company? I have forgotten which?
A. I am not an officer of that company.
Q. Do you know anything personally of its business?
A. Yes, sir.
Q. Do you know anything of the origin of the St. Louis & Suburban Railway Company system?
A. Yes, sir.
Q. State what its origin was?

Mr. WOERNER: In order to be able to intelligently determine whether objection is to be made to this testimony or not I will request counsel for the Complainant to state the object of the testimony, and what he proposes to prove by this witness.

Mr. CHANDLER: Well, I have no objection to that. The Bill in the Suburban case charges that the present system originated by possession of what is known as the narrow gauge system, beginning and ending wholly outside of the City of St. Louis; and it's that allegation that I want to prove.

Mr. WOERNER: I object to that line of testimony on the ground that it is immaterial, irrelevant and incompetent to the issues that are made in this case; also because such matters can be proved
83 only by competent testimony so far as the Defendant—City of St. Louis is concerned, to-wit: the ordinances; even if such testimony were otherwise admissible.

A. It was first built as the old steam narrow gauge road and started just west of the city limits, which at that time were a little west of Grand avenue. This road, or rather that narrow gauge road had changed hands a number of times. After that there was a cable line, the St. Louis Cable & Western, was constructed, and ran out as far as Grand and Olive, to Grand and Olive, or Vandeventer and Morgan; this road was operated at a loss and went into the hands of a receiver. About 1886, I think it was or somewhere around there, they started the construction on that road. It was operated for five or six years at a loss. Then a company was organized, known as the St. Louis & Suburban Railway Company, and bought up this Cable & Western and the narrow gauge road; after that the St. Louis & Suburban Railway Company reconstructed the whole system; changed it from a narrow gauge steam railway and cable road to an electrical one, and so operated it up to the present time.

Mr. WOERNER: I now move that the answer of the witness be stricken out for the reason given above in objecting to his testimony, and for the further reason that it appears that most of what witness has stated should have been proved by ordinances which would have been binding on the City of St. Louis; for the further reason that most of what he has stated should be evidenced by writing, and not subject to the verbal testimony of the witness; also because all that has been stated is immaterial to any legal issue raised in this case.

Q. What was the Western terminus of the Narrow Gauge System of which you have spoken?

A. The steam narrow gauge road?

84 Q. Yes.

A. Florissant; the town of Florissant.

Q. State whether or not any portion of that line at the time you spoke of was laid within the limits of the City of St. Louis?

A. The narrow gauge? Yes, sir; it was; it started a little west of Grand avenue.

Q. I understood you to say the limit on that side was Grand avenue?

A. Yes, sir; it was.

Q. Then state at the time of its origin whether or not any part of the line was inside the city?

A. No, sir; it was not.

Q. At what time did the reconstruction that you speak of occur?

A. About 1890.

Mr. WOERNER: Well, now, if I may interrupt you—you don't mean to say that Grand avenue was the western limit of St. Louis in 1890; do you?

A. No, sir.

Q. Do you know what time the reconstruction occurred?

A. About 1890, I think.

Q. Describe the system of the St. Louis & Suburban Railway Company as it now exists?

Mr. WOERNER: I object to the question for the same reason as first above given.

A. Do you mean as to its operation, or——

Q. Its geographical existence—where does it begin and where does it end and over what streets does it pass?

Mr. WOERNER: I object for the reasons first above given; and also because the ordinance, the validity of which is here in question being Number 21087, does not purport to impose any tax or license fee on the Complainants, or either of them, for any passengers carried outside the limits of the City of St. Louis, but is confined in its operation to cars operated in the City of St. Louis; therefore whether
85 said road extends beyond the city limits, and if so to what extent and whither, is immaterial in determining any of the issues in this case.

A. It starts at Fourth and Elm and runs north on Fourth to Locust, west on Locust to Thirteenth, over Thirteenth to Linden, over to Fourteenth, north on Fourteenth to Wash, west on Wash to Morgan, west on Morgan, to 3919 Morgan, and from there on private right of way to Suburban Gardens, thence north to Florissant and Ferguson. The Union Avenue line runs from Forest Park to Walnut Park, and from there runs over Clarendon avenue and the Suburban's right of way to Union avenue; and over Suburban right of way north on Sarah street to O'Fallon Park; and south over Suburban right *right* of way on Sarah street to Manchester avenue, west on Manchester avenue to Maplewood Loop, thence west over private right of way and on public roads and streets of St. Louis county to the City of Webster and the City of Kirkwood and on to Meramec Highlands. Another line runs from 6100 Maple avenue, the city limits, over public roads to 66th street, south on 66th street and right of way through the town of Clayton to Brentwood, and from Brentwood through Webster and Kirkwood; and also from Brentwood east over right of way to Forest Park; also another line from Ferguson Junction just north of Ramona Park to the town of Ferguson.

Mr. WOERNER: I now move that the answer of the witness be

stricken out in so far as it refers to all portions of said road outside of the limits of the City of St. Louis.

Q. How many miles of the system that you describe lie within the City of St. Louis, and how many miles lie outside of the City of St. Louis?

A. I don't believe I can answer that; I can give you the total mileage.

Q. Just answer as far as you can?

A. The total?

86 Mr. WOERNER: I want to object on the ground that such information can only be evidenced by the ordinances authorizing said railways to operate their roads and cars and not by verbal statements of this witness.

A. The total mileage is a hundred and four miles.

Q. Can you in the future leave with the Examiner the number of miles of said road outside the City?

A. Yes, sir.

Q. And will you do that?

A. Yes, sir.

Mr. WOERNER: I object to the witness leaving anything with the Examiner hereafter, unless such matter be first presented to counsel for defendant and his consent obtained thereto.

Q. What was the extent of the mileage of the system at the date of the Ordinance No. 21,087?

A. In miles? About 104 miles.

Q. Same as it now is?

A. Yes, sir.

Q. What is the longest and what is the shortest distance a passenger is carried by the Suburban System for five cents?

A. Eight miles for five cents, and eight miles for $2\frac{1}{2}$ cents; that's the longest.

Q. What's the shortest? Any distance that a passenger wants to go?

A. Yes, sir.

Q. Any distance short of that that a passenger wants to go?

—. Yes, sir.

Q. What is the financial condition of the St. Louis & Suburban Railway Company?

Mr. WOERNER: I object to this question on the ground that what the financial condition of the St. Louis & Suburban Railway Company is has nothing to do with this case; and on the further ground that said question is irrevelant, incompetent and immaterial; and because the validity or invalidity of the ordinance in question

87 in this case cannot be determined by the financial condition of any particular road, for if the legality of said ordinance could be determined by such matters it might be legal as to some roads and illegal as to others, and it might be valid one year and invalid the next year; and for the further reason that the courts will not consider the reasonableness or unreasonableness of any ordinance

by fluctuating circumstances, or by evanescent conditions of any one or more roads; and because the legality of any ordinance cannot be made to depend on whether the road is making money or losing money; and for the further reason that if said ordinance could be made to depend on the financial condition of the St. Louis & Suburban Railway Company, no license or tax could be charged on a losing company, whereas it might be charged against a successful company; for all of said reasons I object to the question asked.

A. The road has always been operated at a loss.

Mr. WOERNER: I move that the answer of the witness be stricken out for the reasons given in the objection made to the question asked; and because whether said road was operated at a loss or not must be determinated by the figures of income and expense and not by a conclusion of the witness as to the fact.

Q. Was it, at the date of this ordinance that you speak of?

Mr. WOERNER: Same objection.

A. Yes, sir.

Q. State whether or not at the date of the ordinance you speak of, to-wit: No. 21,087, the said System had issued any stock or bonds.

Mr. WOERNER: Same objection.

(Question withdrawn.)

Q. State whether the System has outstanding mortgage bonds, and if so, how many?

88 Mr. WOERNER: I object on the ground that it is immaterial what indebtedness of complainant is and whether they have got any mortgage bonds out or other debts, for the reason heretofore given in the objection to the next two preceding questions; and for the further reason that if there is any such indebtedness, it is postponed to the payment of the taxes and license fees called for in Ordinance No. 21,087; and the Suburban Road or any other Company cannot affect the right of the City of St. Louis to pass ordinances binding on them by any bonds or other obligations that they may enter into.

A. Yes, sir; seven and a half million dollars.

Mr. WOERNER: I now move that the answer of the witness be stricken out for the reasons given in the objections to the question asked; and for the further reason that such information must be obtained by documentary evidence, not the verbal statement of this witness, it being impossible for him to know of these things independent of the records of the company.

Q. What is the amount of its capital stock?

Same objection.

A. Seven million five hundred thousand dollars.

Q. Has the authorized capital stock been issued?

A. No, sir; four and a half million has been issued.

Q. Then the authorized stock is seven and a half millions, they have issued bonds to the extent of seven and a half million?

A. Yes, sir.

Q. And your capital stock consists of four and a half million *actually put in*?

A. Yes.

Q. What were the proceeds of the stock and bonds used for, for any purpose?

A. Constructing and reconstructing the system.

Q. Has there, or has there not been any dividend declared on the stock?

89 Mr. WOERNER: I object for the same reasons given in the objecting to prior questions, that these matters are of no concern in determining the validity of this ordinance; that whether this road makes money or loses money cannot in any shape, manner or form bear on the issue whether the City of St. Louis has a right to pass the ordinance in question, or whether said ordinance is valid or not.

A. No dividends have been paid.

Q. State whether or not the entire proceeds of the paper issued have been devoted exclusively to creating and benefiting the System.

Objected to for the same reasons heretofore given and because the answer must be a conclusion on the part of the witness and not a statement of facts.

A. They have been used exclusively for the construction work, reconstruction and betterments of the system.

Q. What charges does the System make for carrying passengers?

A. Five cents for adults; two and a half cents for children.

Q. State whether the fund—the fare charged—is adequate to meet the obligations of the System?

Mr. WOERNER: I object to the question as immaterial, irrelevant and incompetent; as a conclusion on the part of the witness; and as not bearing on any issue in this case; also because said charges have been fixed by agreement between the Complainant and the City of St. Louis in other ordinances of acceptance of the benefits and privileges conferred by the City of St. Louis upon Complainants in granting permission for operation of the roads.

Q. State whether the fund—the fare charged—is adequate
90 to meet the obligations of the System, thus described in the Bill of Complaint in this case in this language: "Required for the purposes of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it, and to the proper discharge of the obligations imposed upon it by the several special ordinances hereinbefore set forth."

Mr. WOERNER: I object on the ground that counsel refers to several special ordinances without stating what the ordinances are.

A. The fare as charged is not adequate to meet the obligations of the road.

Mr. WOERNER: I move that the answer of the witness be stricken out because it is a conclusion on his part without our being enabled to determine how his conclusion was brought about; because it is not a statement of any facts and because the same is irrelevant, incompetent and immaterial upon the grounds hereinbefore assigned in objecting to said question; and for the further reason that whether said fare is adequate or not does not make any difference as to the right of the City of St. Louis to pass the ordinance in question; and for the further reason that the answer upon its face carries its own refutation, because it is shown that the fare for adults is five cents and the amount of the tax is only one mill per revenue passenger, the obligation to pay said taxes and licenses fees being paramount to any other obligations of said Company.

Q. To what extent is it paramount, Mr. Woerner?

Mr. WOERNER: To the extent that you have got to meet your taxes and license fees or you cannot operate the cars.

Mr. CHANDLER: No matter what amount you may choose to assess; you may as well meet this issue squarely.

91 Mr. WOERNER: I decline to meet the question because it is more properly addressed to the Court than to counsel; and for the further reason because said ordinance requires the payment of one mill only per passenger, whereas the fare is five cents per passenger, which shows that said company must have ample funds with which to meet the obligations of this ordinance; and for the further reasons that under the charter of the City of St. Louis if the said Company cannot meet its just and lawful obligations it is authorized to surrender its charter and quit business.

Q. Did this condition prevail at the date of ordinance No. 21,087?

Mr. WOERNER: I object to this question for the reasons heretofore stated; and also because the witness has already testified that the road always was operated at a loss ever since its organization, and therefore, according to his view of looking at the thing, they never should have paid any taxes of any kind to anybody.

Q. Mr. Stenographer, just change that question to make it read "at and prior to the date of the ordinance."

Mr. WOERNER: I object to any such interlineation of the question as will make my objection without force; ask the question over again if you wish to. I wish the record to show the question as originally asked by Mr. Chandler.

(Here follows some colloquy between counsel; at the conclusion of which the question is withdrawn.)

Q. State whether this condition prevailed at and prior to the enactment of ordinance No. 21,087?

Mr. WOERNER: I wish now to remove my objection that I made to the question that was withdrawn.

92 A. It did.

Q. State under what circumstances and for what reasons the fare of five cents for adults and two and a half cents for children is collected.

Mr. WOERNER: I object to the question on the ground that the reasons are utterly immaterial and have noth- to do with the validity of the ordinance in question.

A. It is done by City Ordinance; we are allowed to collect five cents for adults and two and a half cents for children.

Mr. WOERNER: I move that the answer of the witness be stricken out because such testimony must be shown by the ordinance itself, if such is the fact.

Q. Do you know whether such charge is the result of any contract between the City and the Suburban System?

A. Yes, sir.

A. I move to strike out the answer on the ground that any such contract would have been in writing and could only be proven by such writing or ordinance, and not by verbal testimony; and for the further reason that the answer of the witness is his conclusion on the situation and not a narration of any fact.

Q. Are you familiar with the financial and contractural relation between this System and the City?

A. Yes, sir.

Q. In what capacity do you act for the System, if at all?

A. As secretary and treasurer; and auditor.

Q. Secretary, treasurer and auditor?

A. Yes, sir.

Q. In the exercise of the authority of these several offices do you have personal knowledge of outstanding contract made by the System with the City?

A. Yes, sir.

Mr. WOERNER: I want to ask the witness if these contracts and agreements which he has reference to are not in every instance in writing?

93 Mr. CHANDLER: I object to the question as out of time and as a question which should be deferred to the cross examination, if answerable at all.

Q. The answer states here, Mr. Sommers, that ordinance No. 21,087 is applicable to persons engaged in transporting passengers; do you know whether there is a system of transporting passengers in the City of St. Louis by hacks and coaches.

A. Yes, sir.

Q. Is there such a system?

A. Yes, sir; there is.

Mr. WOERNER: I object to the question as irrelevant, incompetent and immaterial and because the ordinance in question does not refer to any hacks, and if it did, such fact would not bear on any issue in this case.

Q. Do you know whether there are steam railroads operating between different points in the City of St. Louis?

Same objection.

A. There are a number of them, of the steam railways, which engage in that business.

Q. What are they?

Same objection.

A. The Wabash, the St. Louis, Kansas City and Colorado; the Missouri Pacific; and the St. Louis, Iron Mountain and Southern.

Q. Do you know to what extent there has been, if at all, automobile arrangements made for the carrying of passengers during the life of this ordinance and since and prior to the enactment of the ordinance?

Mr. WOERNER: I object to the question as irrelevant, incompetent and immaterial; and on the further ground that automobiles are taxed for the privilege of running by separate ordinances
94 from the one here in question, just as heavily as street cars are.

A. There has been an automobile line to carry passengers.

Q. Within the City of St. Louis?

A. Within the City of St. Louis.

Q. Do you know whether such traffic in passengers was in competition with Complainant's System?

Mr. WOERNER: I object for the reasons heretofore given as being irrelevant, incompetent and immaterial.

A. It was in competition.

Q. Do you know whether it operated to diminish the revenue of Complainant's System?

A. It did.

Q. Do you know whether steam railways carrying passengers in the City as you have stated above operate — the revenue of Complainant's System?

A. It did.

Mr. WOERNER: Same objection.

A. I do.

Q. Do you know whether such traffic in passengers by steam railways operated to dimish the revenues of Complainant's System?

Same objection.

A. I do.

Q. Did it or did it not?

A. It did.

Q. I ask you the same question with reference to hacks?

Same objection.

A. It also diminished the revenues.

Q. I will get you to state whether Complainant's System has paid

to the City of St. Louis from time to time when due all the
95 money called for by any ordinances of the City of St. Louis, except this one mill tax?

A. Always paid them on time.

Q. In full.

A. In full.

Q. Do you know whether Plaintiff's System has kept and performed all its contracts with the City with respect to the payment of money and improvements of streets in the City that have devolved upon it by ordinance?

Mr. WOERNER: I object to the question as calling for a conclusion on the part of the witness and as immaterial, irrelevant and incompetent.

A. It has always met its obligations.

Q. In every respect?

A. Yes, sir.

Q. Does this testimony and this answer apply equally to the St. Louis & Meramec River Railroad Company?

A. It does.

Q. What per cent. on the gross earnings of the two systems is the charge for children; what per cent. of the gross earnings of the system is derived from the fares received for children?

A. I cannot state that exactly just now; I don't know that I understand what you want.

Q. Well, I will put it this way: what per cent. of the gross earnings derived from carrying children is exacted under Ordinance No. 21,087?

Mr. WOERNER: I object on the ground that this is a conclusion on the part of the witness and is not proper to be asked; the proper way to get at it is to ask the fare that is charged for minors, or rather children, and let that be computed by the Court; and on the further ground that the witness has already stated that part.

Q. I only want to save the Court the arduous labor of that computation.

Mr. WOERNER: I don't think it will be any arduous labor.

96 Q. Well, answer the question.

A. Four per cent.

Q. And what per cent. is exacted for the carrying of adults under said ordinance?

Mr. WOERNER: Same objection.

A. Two per cent.

Q. Is or is not that exaction under said ordinance a violation of the contract with the City to charge five cents for adults and two and a half cents for children?

Mr. WOERNER: I object to the question on the ground that it is clearly an improper question for a lawyer to ask any witness because it so palpably calls for a conclusion of law on the part of the witness; and because said matter is purely a question of law and

does not call for any fact; and for the further reason that the Court, as it sits in judgment in this case, is competent to pass on said question without being assisted in its conclusions by the opinions of a lay witness.

A. It is in violation of the contracts.

Q. This bill contains this allegation: "That among the lines of street railway in said City of St. Louis owned and operated by the St. Louis & Suburban Railway Company, are lines constructed, maintained and operated under and by virtue of the provisions of Ordinance No. 19,350 of said City of St. Louis, approved, April 5, 1898." Do you know whether that is a fact or not?

A. It is a fact; they were built and operated according to the franchise.

Q. Do you know whether the right to charge and collect five cents for adults and two and a half cents for children is necessary for the continued operation of the road of both of these Systems?

Mr. WOERNER: I object to the question for the reasons heretofore given in objecting to similar questions; also for the further
97 reason that the answer involves a conclusion on the part of this witness and does not call for any facts; and for the further reason that whether said charge and collection is or is not necessary doesn't cut any figure in this case and cannot be determined by verbal testimony; and that the Court will not declare this ordinance valid or invalid for anything that may be stated as the opinion of any one or more men, but will determine such question solely from the provisions of the ordinance itself.

A. It is necessary; for both Systems. And more too, if we could get it.

Q. State what effect, if any, the construction, reconstruction and equipment of Plaintiff's System has had on the development of the city along its lines?

Mr. WOERNER: I object on the ground that it has nothing to do with the merits or issues raised in this case; and also because both of Complainants never pretended to be charitable institutions acting for the benefit of the citizens of St. Louis; and because they are and always were corporations purely for the purpose of making money for themselves; and whether or not they succeeded in so doing, doesn't concern the municipal authorities.

A. When they started with the Narrow Gauge——

Q. The question is whether it has occasioned the investment in property that has brought additional revenues to the City and been influential in developing and enriching the City.

Mr. WOERNER: I offer the same objection.

A. It has developed the city all along its lines and increased the value of property; where at first it was nothing but frame houses, now it is thickly settled portion of the City with fine residences.

98 Q. Has it operated to increase the taxable revenues of the City?

Mr. WOERNER: I offer the same objection; the same as to the preceding questions; it is a matter utterly indifferent to the issues in this case, what the indirect consequences are of the operation and construction of these roads.

A. Yes, sir; it has.

Q. You may take the witness.

Cross-examination.

By Mr. WOERNER:

X Q. I don't believe I have any questions to ask this witness. Oh, yes, there is this question. Mr. Sommers, is it a fact that this ordnance No. 21,087 as you understand it is an amendment of the prior ordinance which requires a fixed tax of $25.00 as a license fee for running each car?

Mr. CHANDLER: I object as a matter not in issue at all. There is no ambiguity about the ordinance to be helped out by some prior enactment.

X Q. Do you understand that this ordinance is in place of the prior ordinance which made a fixed charge on each car?

Same objection.

A. Yes, sir.

X Q. Now, I want to ask you, whether both of your companies didn't pay that $25.00 per car tax every year so long as you were running these cars?

Mr. CHANDLER: I object because there is no such issue pending here. There is no ambiguity to be cleared up by any former action of the Company, and the contract to collect five cents and two
99 and a half cents cannot be broken down by any prior action of Plaintiffs and cannot be affected by these Companies on the stand.

X Q. They paid up every year $25.00 a car until the passage of this present ordinance?

A. Yes, sir.

X Q. And that sum was not paid under protest, was it?

A. No, sir.

Mr. CHANDLER: Just wait a moment: I want to object to the question because there is no foundation laid for the showing of any knowledge of the witness on that subject.

X Q. That's all.

At this point the further taking of testimony herein was adjourned until tomorrow (Wednesday) morning at eleven o'clock a. m., November 15th, 1905.

11 O'CLOCK A. M., WEDNESDAY, *November 15th*, 1905.

At this time the further taking of testimony was resumed, the appearances for the respective parties hereto being as on yesterday.

Direct examination of witness Sommers continued by Mr. CHANDLER:

Q. How much of the System's railway mentioned in your evidence is over private right of way?

A. In the City of St. Louis?

Q. ——.

A. Yes. Twelve miles and forty-four thousandths. (12.044.)

Q. How much is over private right of way and streets?

A. Well, over the streets—there's 28.772 miles.

Q. That includes the part of the line over streets and the part over private right of way?

100 A. No, that's just on the streets alone; I will give you the total in a minute. The Tracks on both streets and right of way would be 40.816 miles.

Q. And on the streets only exclusive of the right of way?

A. 28.772 miles.

Q. And on the private right of way?

A. 12.044.

Q. State whether or not the acquisition of this private right of way — from the City or from independent owners?

Mr. WOERNER: I object to the question as going into irrelevant matters that have nothing to do with any of the issues in this case.

A. The private right of way was from independent owners and not from the City.

Q. State whether or not the acquisition of that private right of way was expensive or not?

Mr. WOERNER: I object to the question on the ground that the answer called for will be entirely immaterial to any issue in this case, it being utterly immaterial so far as the validity of this ordinance is concerned what price was paid by the Complainant- for the acquisition of any private right of way or whether said price was big or little or whether they acquired it by gift, or how they did acquire it.

A. To the best of my knowledge, it was.

Q. Do you know at what time the private right of way was acquired from Grand avenue east?

Mr. WOERNER: If there is any such—better add that.

A. The private right of way from Grand avenue east?

Q. Do you go over any private right of way from Grand avenue east—does either System?

A. Yes, sir.

101 Q. When was the private right of way acquired in the first instance from the owners?

A. Very recently—the right of way east of Grand avenue; it's only about 150 feet.

Q. When was the private right of way west of Grand avenue acquired?

A. The majority of it in the years 1871, 1872 and 1873.

Q. Do you remember the date when the "scheme and charter" went into effect?

A. No, sir.

Q. Assuming that the Scheme and Charter went into effect in 1876, was the acquisition of this private right of way west of Grand avenue before that date?

A. Before that date; yes, sir.

Q. You say it was?

A. Yes, sir.

Q. What company operated over the private right of way previous to the enactment of the Scheme and Charter in 1876?

Mr. WOERNER: I object to the question because it has nothing to do with this case.

A. To the best of my knowledge it was the St. Louis & Florissant Railroad, the West End and Narrow Gauge, and the St. Louis Central & Western.

Q. Were the railroads that you have just mentioned a part of the private System, the two Systems?

A. Yes, sir.

Cross-examination.

By Mr. WOERNER:

X Q. Mr. Sommers, how many miles of tracks of these companies are there in the City of St. Louis on the public streets and highways?

A. 28.772.

X Q. Does that include cars going both ways?

A. Yes, sir, single track.

X Q. How much of that is east of Grand avenue, can you tell?

102

A. No, I cannot tell; these figures have been taken from the present City limits.

X Q. Well a large portion of it is, anyhow, isn't it?

A. Quite a large portion of it; yes, sir.

X Q. And of all the miles of tracks of these two companies east of Grand avenue you have a private right of way over about 150 feet only; that's correct?

A. Yes, sir.

X Q. An- that was only acquired a short time ago in order to enable your tracks to run over one block and make a shorter cut?

A. Yes, sir; that is east of Grand avenue.

X Q. How many cars do you run from, say, Fourth streets to Sarah street, at, say from seven o'clock to nine o'clock in the morning?

A. I cannot answer that that's out of my department. You would have to take that up with the operating department.

X Q. Do you know what your schedule is as to the intervals between cars?

A. No, sir.

X Q. You know they run the cars about a minute apart, don't you?

A. I don't.

X Q. You know that every one of these cars is crowded between those hours so that people cannot find seats, don't you?

A. What hours?

X Q. The hours I mentioned—from seven to nine o'clock in the morning, say.

Mr. CHANDLER: I object to the question on the ground that there is no charge made by the defendant in these cases as to inefficient management or service.

A. My office is at De Hodiamont and I cannot say what is going on down town.

X Q. Don't you know that your cars are crowded to overflowing in the evening with people going home and that you run
103 your cars just as fast as you can—what I mean is, at as short intervals as possible in order to accommodate the traffic?

A. I don't know.

X Q. Now, Mr. Sommers, I am asking you as a fair-minded man if you don't know that people have to stand in your cars all the time on account of the volume of the traffic?

Mr. CHANDLER: I object on the ground that there is no allegation to support the question and on the ground that witness has repeatedly answered that he does not know.

X Q. Well, what do you say?

A. My office is in De Hodiamont and I don't know what goes on down town.

X Q. Don't you sometimes leave the down town district at some time in order to get home?

A. No, sir.

X Q. You never do?

A. No, sir.

X Q. You never go home from seven to nine o'clock in the evenings?

A. No, sir; I go from De Hodiamont east on the cars.

X Q. Well, now are there not some occasions when you have been down town at that time of the day and have left there about that time to go west?

A. Yes, sir; once or twice.

X Q. Well now, I ask you, Mr. Sommers as a fair-minded man, whether people are not compelled to stand in your cars for lack of seats; I am not criticising your Company; I am asking you whether you don't know that traffic is so great that they cannot furnish cars to accommodate the people?

Mr. CHANDLER: I object to the question because there has been no foundation laid for knowledge on the part of the witness and because the witness has repeatedly answered that he doesn't know.

A. That's a question I cannot answer because I don't know.

104 X Q. Do you know how many people you carried last year?

A. Yes, sir.

X Q. I wish you would state what that number is?

A. Do you mean in the city alone or in the whole system?

X Q. Yes, in the city; and I am now referring to revenue or pay passengers.

A. Adult passengers—21,228,786; children, 1,677,573; total of 22,906,359.

X Q. For what year is that?

A. 1904.

X Q. Have you got the figures for 1903?

A. Yes, sir.

X Q. Just give those please.

A. Adults, 15,188,352; children, 1,251,523; total, 16,439,875.

X Q. Have you got the figures for the preceding year, 1902?

A. No, sir.

X Q. Have you got the figures for this year as far as you have taken any?

A. No, sir; I didn't have time to make those up.

X Q. Have you got any means of revenue besides the carrying of passengers?

A. We have.

X Q. What are they?

A. Rental of land and buildings; rental of freight privileges; and advertising, car advertising.

X Q. How large are your receipts from these sources besides your fares for passengers?

A. About 2 per cent.

X Q. I mean in figures?

A. I cannot give you those; I haven't those figures with me.

X Q. You mean that your receipts from these sources in proportion to the collection of fares amounts to about 2 per cent.?

A. Yes, sir.

X Q. How many cars do you operate, or did you operate last year?

A. About 110 cars a day.

105 X Q. And how many trips do they make?

A. I cannot answer that; I don't know.

X Q. Can you tell about?

A. Why, each conductor would average about six trips.

X Q. A day?

A. Yes, sir.

X Q. Have you got the figures showing how many trips you made during the year 1904?

A. No, sir.

X Q. Or any other year?

A. No, sir; I haven't those figures.

X Q. Now between Fourth street and Sarah street—all the cars of the Suburban run over those tracks do they not?

A. No, sir.

X Q. Which don't?

A. Union Avenue; Fairmount Avenue; and the line running to Clayton.

X Q. I mean those running within the City of St. Louis?

A. No, sir. The Union Avenue line.

X Q. Have you got any cars that operate wholly without the City of St. Louis?

A. Yes, sir.

X Q. What line?

A. The line known as the Brentwood Division; and the Florissant Division; and the Ferguson Division.

X Q. The Brentwood Division. They never come within the limits of the city?

A. No, sir; those that I mentioned don't.

X Q. And they are not affected by this ordinance, are they?

A. So I understand.

X Q. They are not included within the returns that you gave as of passengers carried in the City of St. Louis?

A. No, sir.

X Q. How much do you pay out in the way of interest on bonds?

A. $375,000.00.

X Q. Per year?

A. Yes, sir.

X Q. How much have you paid out for extensions of your roads in the county within the last, say, ten years?

A. I cannot answer that; I don't know.

106 X Q. How much have you paid out for extensions of your road, or any of them, within the City of St. Louis?

A. I cannot answer that; I haven't the figures with me.

X Q. How much have you paid out for construction and reconstruction?

A. Within what period of time?

X Q. Within any period that you can fix?

A. About three and a half to four million dollars.

X Q. What was that for and within what time?

A. I should say within the last 2½ to 3 years for reconstruction of lines.

X Q. Within the City of St. Louis?

A. City and County together.

X Q. I don't care about the county at this time; how about the city?

A. I cannot answer that.

X Q. Your Company has paid out a great deal of money in laying out these various lines in St. Louis county, didn't it?

A. Yes, sir.

X Q. Do you know how much?

A. No, sir.

X Q. You made these various extensions out into thinly settled region—at least as compared with city itself—with the idea of de-

veloping that country and ultimately obtaining the business, didn't you?

A. Yes, sir.

X Q. In every case of that kind, the road loses money at first, doesn't it?

Mr. CHANDLER: I object to the question unless the witness has personal knowledge.

A. So far as I know they do, yes, sir.

X Q. The idea is that ultimately when the sections build up they can carry the people who go to and from those districts, isn't it?

A. That's a fact.

X Q. And so long as the companies are doing that sort of thing and looking to the future in that way and extending their
107 lines to unsettled districts, it costs them more money than they make?

A. Yes, sir.

X Q. And that's what you've been doing?

A. Yes, in some places; yes, sir.

X Q. And that's why your company hasn't been paying any dividends?

A. No, sir.

X Q. You expect to look forward to the time when you will pay dividends don't you, by reason of this extension you are getting don't you?

A. Yes, sir.

X Q. And still notwithstanding the fact that you have been paying out these large sums of money and extending your lines into the country with the idea of discounting the future and are paying out these vast sums by way of interest on your bonds, still you state that you cannot pay the license tax that is called for by this ordinance on each car; is that right?

A. Yes, sir.

X Q. Was it your idea that the license tax or license fee must be postponed to all these other obligations?

Mr. CHANDLER: I object to the question as mere argument on the part of the counsel and as not calling for a fact on the part of the witness.

A. I think the mill tax for each passenger is unreasonable.

X Q. I didn't say anything about the one mill per passenger or anything of that kind; and I now move to strike out the answer as not responsive to the question.

A. We always have paid our license right along up to this time.

X Q. Why did you pay it?

Mr. CHANDLER: I object; this witness can only speak for himself but not for the motives of the companies.

X Q. Why did you pay it?

A. Because the vouchers were approved for payment.

X Q. Is that the only answer that you will give?

A. Yes, sir.

108 X Q. When you say that you have paid it, you mean the $25.00 tax per car, don't you?

A. Yes, sir.

X Q. And as I understand you the only reason you quit paying your license fee is because this is larger than $25.00 per car?

Mr. CHANDLER: I object as the witness is not authorized to speak for the company.

A. The vouchers were not approved and I didn't pay them.

X Q. Is that the only answer that you will give?

A. Yes, sir.

X Q. Do you know of any reason why the $25.00 tax was paid and not the tax called for by the present ordinance, except that the latter will amount to more than the former?

Mr. CHANDLER: I object as there is no issue raised as to the $25.00 tax; further, there is no ambiguity in the contract permitting complainants to charge the amount mentioned in the testimony; and there is no evidence to explain the contract needed, and therefore this is wholly immaterial.

Mr. WOERNER: In response to that statement from Mr. Chandler I want to say there is no question here as to any contract but only as to a tax on cars; neither has this anything to do with the five cents fare that the complainant is charging, the tax itself being determined by the amount equivalent to one mill per passenger carried on each car, and that the tax is not on the fare charged but is on the car; and moreover that if the complainant's position were correct that the original ordinance is a contract, that then the prior dealings between the parties would be evidence showing the interpretation put by the parties themselves on such alleged contract.

Mr. CHANDLER: I move to strike out this last so-called objection on the ground that it is mere argument.

109 A. I don't know.

X Q. Now, Mr. Sommers, I believe you stated in your direct examination that your capital stock amounted to 7,500,000 dollars, so far as the same was authorized; and that you have issued only 4,500,000, so that you still have 3,000,000 of unsold stock on hand; why don't you sell that stock, if you need some money and pay your taxes?

A. I cannot answer that.

X Q. Do you know of any officer of your company that can answer it?

Mr. CHANDLER: I submit that this is not a fair question to ask, whether the witness knows of any officer that will answer the question, no witness will swear to that; that's not a fair question and I object to it.

A. I cannot answer that.

X Q. And you have also issued bonds for seven and a half million dollars upon which you are paying interest?

A. Yes, sir.

X Q. Well, suppose you had not issued those bonds, do you think you would have enough money left to pay your taxes?

Mr. CHANDLER: I object to the question as calling for no fact and as a question from the very nature of which it shows that it cannot be answered by this witness.

Mr. WOERNER: For the reasons stated by Mr. Chandler I will withdraw the question.

X Q. Most of the cars of the Suburban System run down town don't they?

A. Let me ask, City or County; or City and County, do you want it answered?

X Q. Only those that are in the city?

A. Yes, most of those run down town.

X Q. Both of these roads are operating cars within the City of St. Louis, do they not?

A. Yes, sir.

X Q. I believe that's all.

110 Redirect examination.

By Mr. CHANDLER:

R. D. Q. What's the distance from Grand avenue, Mr. Sommers, to the eastern terminus of the road, of both systems?

A. From Grand avenue—east?

R. D. Q. I am not asking for the trackage, but for the distance between Grand avenue, the former boundary of the city, and the eastern terminus of your line?

A. A little over three miles.

R. D. Q. Now these outside lines spoken of feed the inside lines, don't they?

A. Yes, sir.

R. D. Q. I believe that's all.

(Signed) EDGAR P. SOMMERS.

Subscribed and sworn to before me this 23rd day of November A. D., 1905.

(Signed) JAMES R. GRAY, *Examiner.*

Stipulation.

It is hereby admitted by the defendant, subject to objection on account of the competency and materiality and relevancy of said admission as testimony, that the records of the License Collector's Office of the City of St. Louis show that the number of omnibuses, hacks and other like vehicles engaged in carrying passengers for hire in the City of St. Louis is about five hundred, many of whom are doing business under said licenses. Counsel for the Defendants objects to the introduction of said testimony for the reason that it is incompetent, immaterial and irrelevant and has no connection with

any issue in this case, the licensing of said vehicles being a separate and independent thing from the licensing of street cars.

J. S. WALSH, JR., a witness on behalf of the Complainants, after being duly sworn, testified as follows:

111 Direct examination.

By Mr. CHANDLER:

Q. Mr. Walsh, state your full name, please?
A. J. S. Walsh, Jr.
Q. Have you any official or personal relation with either of the complainants in these cases, the St. Louis and Suburban Ry. Co., or the St. Louis and Meramec River Ry. Company?
A. I am Vice-President and General Manager of the St. Louis and Suburban Railway Company.
Q. You have had your attention called to the exaction by the City of St. Louis of one mill tax on every revenue passenger carried by the Suburban System?

Mr. WOERNER: I object to the question because it does not state a fact; there is no exaction of one mill on every passenger carried; the tax is on the car, the amount of which tax is only ascertained by being fixed at the rate of one mill for each passenger carried on the car.

A. Yes, sir.
Q. Has that exaction been paid?
A. No, sir.
Q. Why not?
A. We consider the tax illegal and unjust.

Mr. WOERNER: I move that the answer of the witness be stricken out as being pure opinion, not relating to any fact or tending to establish any fact; and for the further reason that whether the witness considers it to be legal or illegal and unjust, or the officers of these companies think so, is a matter utterly immaterial so far as the validity of this Ordinance is concerned.

Q. Do you know whether the Suburban System was developed under the conviction of the officers of the Suburban System that the
112 right to charge five cents for every adult passenger carried and the right to charge two and a half cents for every child carried was permanent and inviolable?

Mr. WOERNER: I object to the question on the ground that the conviction of the officers of these companies and the ideas upon which they proceeded in the so-called development of their road are utterly immaterial in this case and throw no light on any issue involved; and can in no way, shape, form or manner bind the City of St. Louis or affect its right to pass the Ordinance in question.

A. It's a fact that we are bound by the Ordinances to charge a fare not exceeding five cents within the city limits, and for children

under the age of twelve a fare not exceeding two and a half cents—we are bound strictly by ordinances to do that.

Q. I don't think that answers my question.

Mr. WOERNER: I move to strike out the answer of the witness because if such is a fact the ordinances mentioned can only be evidenced by writing and cannot be gone into by verbal statements.

Q. Repeat the question to the witness. (Question read as above.)

A. We have considered it that we have no right to charge more than five cents for adults and two and a half cents for children.

Mr. WOERNER: I move that the answer of the witness be stricken out for the reason that it doesn't make any difference what they consider themselves bound by, neither do their opinions affect any question of law in this case.

Q. Mr. Walsh, what's the distance from the eastern terminus of the Narrow Gauge Road as it was before the City Charter was adopted, and the present western boundary of the city?

A. About four and a half miles.

113 Q. State which railroad was the first—which railroad composing a part of the Suburban System was the first to be constructed is the question?

A. The Narrow Gauge.

Q. When constructed, was the Narrow Gauge wholly outside the City of St. Louis?

A. The road itself was; I am not positive about the eastern terminals; there might have been a few feet, say a hundred feet of track within the city.

Q. And when the Scheme and Charter was adopted in 1876 the boundaries of the city, the western boundary of the city was moved further west, wasn't it?

Mr. WOERNER: I object on the ground that the Scheme and Charter will show that.

A. Yes, sir.

Q. What I want to get at is the length of this Narrow Gauge Road that was brought into the city by the adoption of this Scheme and Charter?

A. From one extension to the other extension of the limits it finally reached a distance of four and a half miles.

Q. How far is it from Grand avenue to the western boundary of the city now?

A. By our rails? About four and a half miles.

Q. Now the Narrow Gauge Railroad was organized under the Steam Railroad Act?

A. Yes, sir.

Q. And was in existence at the time of the adoption of the Scheme and Charter, that is prior to 1876, wasn't it?

A. It was constructed and operated in '76; the charter I believe was granted in '73, I am not positive as to the date.

Mr. WOERNER: I move to strike out the answer as incompetent,

the only evidence showing when the Charter was granted being by that instrument itself.

Q. That part of the Narrow Gauge which extends from
114 Grand avenue to the present Western boundary of the City is a part of your system, a part of the Suburban System, is it?

A. That part of the Suburban System now only goes to Vandeventer avenue and from Vendeventer avenue east it was the old Cable and Western.

Q. What was it from Vandeventer avenue to the western boundary of the city?

A. You know the old Narrow Gauge ran some five hundred feet west of Grand avenue on Olive; but we are not operating that part of the road from Olive to Morgan; we have cut off that part of the old road and have connected with the Cable and Western——

Q. At any rate from Grand avenue to the western boundary of the city is covered by a part of the old Narrow Gauge System, isn't it?

A. Yes, sir.

Q. The Narrow Gauge System to which you have succeeded?

A. Yes, sir.

Q. That's all.

No cross examination.

(Signed) J. S. WALSH, JR.

Subscribed and sworn to before me this 23rd day of November, A. D. 1905.

(Signed) JAMES R. GRAY,
Examiner.

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri. In Equity.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

115 It is hereby stipulated and agreed by the parties to this action that the ordinances of the City of St. Louis mentioned in complainant's bill herein and numbered 15954, 15547, 19350, 19393, 19954, 19550, 21087, were enacted by the City of St. Louis, and that each of them applies to complainant's system of railway described in complainant's bill, so far as said system lies within the City of St. Louis and that each and all of them has and have been in all things acted under, obeyed, and kept and performed by complainant, which ordinances are hereto attached, and made part hereof, all of which have been accepted by complainant.

(Signed) JEFFERSON CHANDLER,
Attorney for Complainant.
CHAS. W. BATES,
WM. F. WOERNER,
Attorneys for Defendants.

At this point the further taking of testimony herein was adjourned until Friday morning, November 17th, A. D. 1905, at eleven o'clock A. M.

Eleven o'clock A. M., Friday, November 17th, 1905.

At this time by direction of attorney for complainants herein the further taking of testimony herein on behalf of Complainants is discontinued without day, and these depositions are closed.

116 (15,954.)

An ordinance authorizing the St. Louis and Suburban Railway Company to acquire, construct, operate and maintain a double track passenger railroad on, along and across certain streets, alleys and city blocks, in the City of St. Louis, and to operate its line of railroad by cable or electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto the St. Louis and Suburban Railway Company, its successors and assigns, to acquire all the rights, franchises, immunities, privileges and concessions heretofore granted unto the St. Louis Central and Western Railway Company, its successors and assigns, by Ordinance Number 15,547, of the City of St. Louis, approved March 28th, 1890, except as by this ordinance is otherwise specially provided and excepted and when said St. Louis and Suburban Railway Company shall have acquired the same, it may acquire or construct, and may operate and maintain a double track passenger railroad on, over and along any part or parts thereof, and for the purpose of conveniently connecting the different portions of the tracks which it is authorized by this ordinance to operate, it may in addition, construct, operate and maintain a double track passenger railroad from a point at or near the present terminus of the cable tracks on Morgan street, by the most feasible route over Morgan street, into City Block Number 3754 of the City of St. Louis, to a point on the roadbed or right of way of the steam division of what was formerly the St. Louis Cable and Western Railway Company's railroad, now owned by the St. Louis and Suburban Railway Company, distant not more than six hundred and twenty feet west of the west line of Vandeventer avenue; and may also construct, maintain and operate a double track passenger railroad on Union avenue from the
117 point where the said steam division intersects Union avenue southwardly, on, over and along said Union avenue to a point three hundred feet inside of Forest Park to a point to be selected by the Board of Public Improvements, and may also construct, maintain and operate a double track passenger railroad from the intersection of said Union and Finney avenues, eastwardly on said Finney avenue to the aforesaid roadbed or right of way of said steam division where the same now crosses said Finney ave.; and the said St. Louis and Suburban Railway Company, its successors and assigns,

may also construct, maintain and operate a double track passenger railroad over the whole of the route now occupied by any of the tracks of what was formerly known as the St. Louis Cable and Western Railway Company excepting the spur track to the old depot site near Olive street herein mentioned, and now owned and operated by the St. Louis and Suburban Railway Company; and it may occupy and use with its tracks, roadbed and appurtenances, from its present depot near Vandeventer avenue to the west line of Taylor avenue, in any alley or street now or hereafter established, for public use, three feet contiguous to the north line and seven feet contiguous to the south line of the present roadbed or right of way of the present steam division of said railroad, which is now owned and operated by said St. Louis and Suburban Railway Company; and said St. Louis and Suburban Railway Company may also occupy and use with its tracks, roadbed and appurtenances, between the west line of Taylor avenue and a point where the present line of said railway crosses the City limits in a northwesterly direction, in any alley or street now or hereafter established, five feet contiguous to and on each side of the present roadbed or right of way of said steam division now owned and operated by the St. Louis and Suburban Railway Company, and the use and occupation above described shall be in lieu of the route authorized by Ordinance Number
118 15,547, in Richmond place, near Taylor avenue, westwardly through Richmond place, and intersecting and crossing the streets and city blocks to King's Highway; thence through Morgan street, to Union avenue, also in lieu of the use of the entire alley on the south side of said roadbed or right of way, as included in the route granted in the foresaid Ordinance Number 15,547; and the said St. Louis and Suburban Railway Company may also construct, maintain and operate all curves, switches, sidings and connections, and may make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its tracks along the route which is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the present gauge of the cable division of said railway, or the gauge established by general ordinance for street railroads in the City of St. Louis; but nothing contained in this ordinance shall be so construed as to give any right to said St. Louis and Suburban Railway Company to operate or change the gauge of the spur track now running from the present depot on Morgan street near Vandeventer avenue to the old depot site near Olive street and Cabanne avenue, it being the intention, as soon as possible, to discontinue the existence of said spur track and the running of trains thereon.

SEC. 2. Said St. Louis and Suburban Railway Company, its successors and assigns, may operate its railroad along the route authorized herein by cable laid under ground, or by electricity, either by the storage battery, the conduit underground, or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient to the use of electricity as a motive power, may be erected and placed either between the tracks of said

railroad or along the curbs of all streets, on, over across or
119 along which said railroad may at any time be operated, under this Ordinance or the aforesaid Ordinance No. 15,547, except as by this ordinance is otherwise specially provided or excepted, and along the line of the right of way as established by this Ordinance between Vandeventer avenue and a point where said railroad crosses the city limits, said poles to be not less than twenty feet above the surface of the streets and alleys, and to be of such form and material and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; but in no case shall the poles be placed between the tracks on any street east of Vandeventer avenue, and said St. Louis and Suburban Railway Company shall have the right to make all needful and convenient changes from time to time by the construction and erection of all needful and convenient curves, trenches, excavations, sewer connections, cable and machinery, poles and wires, in any of the streets or alleys in, along, over or across which its railroad may be constructed, maintained or operated, provided that said work shall be done in accordance with plans approved by said Board of Public Improvements.

But said railway company shall cause the grade of its roadbed and tracks to conform to the grades of the streets now or hereafter established at all points where said railroad crosses any of the streets of the City of St. Louis, and when that part of its line of railroad between its present depot near Vandeventer avenue and its terminus at Sixth and Locust streets shall be operated by electric power, said company shall cause the present slots between the rails of its tracks to be closed, and the surface of the streets between the rails of said tracks to be put into condition satisfactory to the Board of Public Improvements.

SEC. 3. The St. Louis and Suburban Railway Company
120 shall commence the work of construction within six months after the approval of this ordinance, and have the entire work completed, and have the railroad authorized herein in full operation in the transportation of passengers in cars propelled in continuous passages by cable or electric power, within two years from the approval of this ordinance, and thereafter no cars shall be propelled on any part of its lines of railroad as herein authorized by steam locomotives. And from and after the expiration of the two years aforesaid, the St. Louis and Suburban Railway Company, its successors and assigns, shall run passenger cars propelled by cable or electricity over its lines of railroad every day in the year during the life of this franchise as follows: On its main line from Sixth and Locust streets to Well's station from six o'clock a. m. to eight o'clock a. m., at intervals not exceeding ten minutes; and from eight o'clock a. m. to ten o'clock a. m., at intervals not exceeding five minutes; and from ten o'clock a. m. to four o'clock p. m., at intervals not exceeding ten minutes; and from four o'clock p. m. to seven o'clock p. m., at intervals not exceeding five minutes; and from seven o'clock p. m., to ten o'clock p. m., at intervals not exceeding ten minutes, and from ten o'clock p. m., until twelve o'clock

midnight, at intervals not exceeding fifteen minutes; and it shall also run a special train starting at Well's Station at five-thirty a. m., running eastwardly to Sixth and Locust streets; and on the branch line running to Forest Park, it shall run its cars at intervals not exceeding ten minutes from six o'clock a. m. to twelve o'clock midnight. East of Grand avenue it shall not run its cars at a speed greater than ten miles an hour, nor greater than twenty miles an hour west of Grand avenue on its main line, nor greater than fifteen miles an hour on its branch road to Forest Park. The failure of the said Railway Company, its successors or assigns, to have its lines of railroad authorized herein in full operation within two
121 years from the approval of this ordinance as above required, or the failure to maintain it in effective operation, and to run its cars by cable or electricity, or the attempt by said Railroad Company, its successors or assigns, to propel cars on any part of said railroad by steam locomotives after the lapse of the two years aforesaid, shall *ipso facto* work immediately a complete and absolute revocation of this Ordinance and forfeiture of all the privileges, rights and franchises granted in this Ordinance the same as if it had never been passed. The temporary suspension or the temporary use of horse power in drawing cars in the event of the derangement of the machinery or other extraordinary emergency shall not be deemed a violation of this Ordinance. The fare from any point or station on the main line or branch of this railway to any point on its lines as herein authorized to be constructed and operated shall not exceed two and one half cents for persons under twelve years of age, and not exceed five cents for persons over twelve years of age for a continuous passage one way.

SEC. 4. Within sixty days after this ordinance shall become a law said St. Louis and Suburban Railway Company, its successors and assigns, shall file with the City Register its written acceptance thereof, and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties to be approved by the Mayor and Council, conditioned that said Company shall observe all the terms and conditions of this Ordinance, and all general Ordinances now in force or that may hereafter be passed in reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs, by reason of the construction, operation or maintenances of said railroad, which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond shall be demanded and given and ap-
122 proved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be cancelled and returned to the makers and the new bond filed with the Register of the city.

SEC. 5. The bond required by this ordinance, as aforesaid, shall be in lieu of any bonds required by said Ordinance Number 15,547, or by the Ordinances Number 12,852, and Number 13,282, but the said St. Louis and Suburban Railway Company shall construct, operate and maintain its railroad subject to the obligations and regulations, and with all the rights, privileges, immunities, and ex-

emptions in said Ordinance Number 15,547 contained, except as by this Ordinance is otherwise specially provided, or excepted, and not inconsistent with the provisions of this Ordinance and free from all penalties, burdens and obligations, except such as are imposed by this Ordinance and by the aforesaid Ordinance Number 15,547, provided that when said St. Louis and Suburban Railway Company, its successors and assigns, shall have acquired the rights, franchises, privileges and immunities granted to said St. Louis Central and Western Railway Company by said Ordinance Number 15,547, the said St. Louis and Suburban Railway Company, its successors and assigns, shall have the option to construct maintain and operate its tracks, on all or any portion of the route described in said Ordinance Number 15,547, excepting the right to occupy and use that part of the route authorized in said Ordinance Number 15,547 on Richmond place and Morgan street as herein provided in Section One, also excepting the right to use the alley on the south side of the roadbed of the narrow gauge or steam division of the former St. Louis, Cable and Western Railway Company, between its depot near Vandeventer avenue, Morgan street and Taylor avenue, as provided in Ordinance Number 15,547, excepting the seven feet thereof
123 authorized in Section One of this Ordinance, which seven feet may be used by this company as therein provided. Nothing in this section shall be so construed as to relieve the St. Louis and Suburban Railway Company from any obligation in regard to the amount of money to be paid to the City of St. Louis under the provisions of Ordinance Number 15,547.

SEC. 6. The right to use the three feet contiguous to the north line and seven feet contiguous to the south line of the present roadbed or right of way of said steam division of said railroad from its present depot near Vandeventer avenue to the west line of Taylor avenue, and also the right to use five feet contiguous to and on each side of the present roadbed or right of way of said steam division of said railroad between the west line of Taylor avenue and a point where said railroad crosses the westerly City Limits in any alley or street now or hereafter established, as granted by this Ordinance, shall cease and terminate whenever said St. Louis and Suburban Railway Company, its successors and assigns, shall cease to use, as motive power for the moving of its cars, electricity or cable power, as in this ordinance is authorized and required.

SEC. 7. No freight depot, coal yard, lumber yard, stock or cattle yard shall be established, erected or maintained by this company, its successors or assigns, anywhere along the lines of its railroad in the City of St. Louis, nor shall any freight or cattle cars be run on any part of its railroad in the City of St. Louis, nor shall any cattle, stock or freight be carried thereon after the road is ready for operation by cable or electricity, and in no event after the lapse of two years from the approval of this ordinance, excepting freight required for the construction, maintenance and operation of said railroad, and excepting family supplies (excluding coal), for the
124 use of persons living on or near the line of said railway, which may be carried on said road west of Vandeventer avenue,

but not east of said avenue. Any violation of the provisions of this section by said company, its successors or assigns, shall work a forfeiture of all the rights, franchises and privileges in this ordinance granted.

SEC. 8. The said railway company shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail in perfect repair as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street over which it runs or crosses, and between the rails of the same, or better material, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the repairing or reconstruction of said street; and provided, further, that at all curves, switches and railway crossings, the space between the rails, and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

SEC. 9. Said railway company hereby agreeing to construct a depot building and waiting-room to be located at the terminus of its tracks in Forest Park in accordance with the following conditions and provisions, to-wit: Said railway company, its successors and assigns, shall cause plans and specifications to be prepared for said depot building and waiting room by a skillful architect or architects, and to cost not less than twenty-five thousand dollars, which said plans and specifications shall be submitted to and shall be subject to the approval of the Board of Public Improvements, and when so approved said company, its successors or assigns, shall pro-
125 cure bids for the construction of said building and waiting room from at least three responsible parties, which said bids shall be submitted by said company, to said Board of Public Improvements, and said Board shall accept the lowest of said bids; but no bids shall be accepted by said Board unless the same shall amount to at least the sum of twenty-five thousand dollars, and said company, its successors or assigns, shall thereupon cause said depot building and waiting room to be constructed at its own cost and expense in accordance with said plans and specifications, and according to the terms of the contract so awarded by said Board of Public Improvements, and the construction of said depot building and waiting room shall be under the supervision of said Board of Public Improvements. Said depot building, when completed, shall become the property of the City of St. Louis, and be under the regulations of the Park Commisioners, subject, however, to the use of the said Railroad Company, as a passenger depot.

SEC. 10. This Ordinance and all the rights, privileges and franchises hereby granted shall continue in force for the term of forty-five years from the date of its approval.

Approved February 6, 1891.

[15,547.]

ordinance authorizing the St. Louis Central and Western Railway Company to construct, operate and maintain a double track passenger railway on, along and across certain streets, alleys and city blocks in the City of St. Louis.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto George L. Peabody, Henry E. Warner, George W. Parker, Joseph C. George, George A. Baker, Edward R. Feuerborn, Walter J. Blakey, H. C. Buhoup and Henry L. Edmunds, when incorporated under the laws of the State of Missouri, and in the name of the St. Louis Central and Western Railway Company, and unto said company, its successors and assigns, to lay down, construct, or acquire and to operate and maintain a double track passenger railroad, on, over and along the route prescribed in section 2 of this ordinance, and over and across all streets and alleys, city blocks and other places crossed or intersected by said route, together with all necessary curves, switches and sidings.

SEC. 2. The railroad authorized by section 1 of this ordinance shall begin on Locust street, at its intersection with Sixth street, and run thence west with double track on Locust street on the present tracks or roadbed of the St. Louis Cable and Western Railway Company to Thirteenth street, thence north on Thirteenth street to Lucas avenue, thence west on Lucas avenue to Fourteenth street, thence north on Fourteenth street to Wash street, thence west on Wash street to its intersection with Easton avenue, thence over and across Easton avenue into Franklin avenue at its junction with Whittingwell avenue, thence west on Franklin avenue to a point about one hundred and fifty feet east of Grand avenue, thence curving through city block 1,063 and across Grand avenue into Morgan street on the west side of Grand avenue, thence west on Morgan street to the present terminus of the cable division of the St. Louis Cable and Western Railway Company, thence curving northwestwardly through city block 3,754 to the alley on the south side of the roadbed of the narrow gauge division of the St. Louis Cable and Western Railway Company; thence westwardly through said alley and over and across all intervening streets, highways and private property in a line with said alley to Taylor avenue; thence over and across Taylor avenue into city block number 3,761, and thence by the most practicable route into Richmond place, at a point about three hundred feet west of Taylor avenue; thence westwardly on Richmond place to Walton avenue; thence over and across Walton avenue through city block number 3,762, over and across Cleveland avenue, through city block number 3,763, over and across Whitby avenue, through city block number 3764 over and across Aubert avenue, through city block number 3,765, over and across Kingshighway into Morgan street on the west side of Kingshighway, thence westwardly on Morgan street to Union avenue, and thence south on

Union avenue to the railroad track of the Wabash Western Railway Company, which is at or near the north line of Forest Park; and if said grantee, its successors or assigns, shall at any time succeed in obtaining the right of way over the private lands west of Union avenue and adjacent to Forest Park, its tracks may be deflected by easy curving out of Union avenue and into such lands, and *that in* event its tracks and railroad may be projected, extended, constructed and operated over the track or tracks of the Wabash Western Railway Company and over all intersecting streets and alleys on an elevated structure, into Forest Park at a point west of the superintendent's house and north of the most northerly driveway, so that no roadway in the park will be crossed or obstructed by
128 them; such terminal point to be determined by the Board of Public Improvements, the elevations of such elevated structure over all intersected streets and alleys, if any, and the plan by which the deflection from Union avenue and into the parks is to be made, as well as the point of deflection to be submitted to and approved by the Board of Public Improvements before the work is done, and when approved by the Board of Public Improvements, the work shall be done in strict compliance with the plan so approved; provided further, that the St. Louis Central and Western Railway Company, its successors and assigns, may maintain the wheel in Sixth street, on which the cable of the railroad now in Locust street runs, where it is now placed; but the most eastern switch shall be taken up and thrown far enough west to enable cars to be switched thereon from one track to another without projecting beyond, or east of the west building line of Sixth street, and said railway company agree that under no circumstances shall its cars at any time project east of the building line on the west side of said Sixth street.

SEC. 3. The power to be used in the propulsion of the cars of said St. Louis Central and Western Railway Company, its successors and assigns, shall be cable underground or electricity. The electricity, if adopted, to be carried either by storage battery or by conduit under ground or at the election of the company, through overhead wires by the overhead wire system, on ornamental iron poles, or such other as may be permitted by the Board of Public Improvements. The poles to be placed either at the curbstone along the route on either side, or between the tracks of the railway company, as may be determined by the Board of Public Improvements, either for the whole line or for parts thereof, as may in the judgment of the Board be most desirable in the interest of the public; but until author-
129 ized by future legislation electricity shall not be used on that part of the line of said railroad east of 22nd street. For the purpose of changing from grip to motor cars, and vice versa, at this point, said company its successors and assigns, are authorized to lay down, construct and operate and maintain all necessary and convenient switches in the intersecting street at its power house, both north and south of the main line, not, however, to exceed one hundred and fifty feet in length either way. In case of emergency, horses may be used for motive power.

SEC. 4. If in the construction of this railroad under the authority of this ordinance, any water pipe or sewer is interfered with, so as to require the same to be relaid or repaired, all such work shall be done by the proper city department, and the total cost or expense thereof shall be paid by said railway company, its successors or assigns. If any public water pipe or sewer along which said railroad so to be constructed and operated shall, in consequence thereof, at any time be injured or damaged by reason of the construction of said railway thereon, make the repairing or reconstruction of such water pipe or sewer necessary in the opinion of the proper authority of the City of St. Louis, said railway company, its successors or assigns, shall make such repairs at its own cost and expense, and in order to insure a faithful compliance with the provisions of this ordinance relative to the repairing of streets, tracks, water and sewer pipes, the said railway company, its successors or assigns, shall pay into the City Treasury the sum of five hundred dollars within thirty days after the acceptance of this ordinance, as a special fund for the purpose of defraying the cost of such repairs as the said railway company, its successors or assigns, may be liable to make, or which, in the opinion of the Street Commissioner, shall be necessary to be made. Whenever there shall be any deficit in the deposit above mentioned, in consequence of the part or whole of said deposit having been used for repairs by the Street Commissioner, the President of the Board of Public Improvements shall notify said company in writing, its successors or assigns, that such deficiency exists, and a failure to make such deficiency good by said railway company, its successors or assigns, within ten days after said notice shall have been given, shall be deemed a misdemeanor, and upon conviction thereof before any Police Justice of the City of St. Louis said company shall be fined not more than twenty-five dollars for each day such deficiency shall continue.

SEC. 5. Said railroad and its appurtenances shall be maintained in good order by said company, and said railroad, between Sixth and Locust streets and Forest Park, shall be operated between the hours of five o'clock a. m. and twelve o'clock midnight, and the cars shall be run thereon between the hours of five o'clock a. m. and nine o'clock a. m. at intervals not greater than five minutes, and between nine o'clock a. m. and five o'clock p. m. at intervals not greater than seven minutes, and between five o'clock p. m. and seven o'clock p. m. at intervals not greater than five minutes, and between seven o'clock p. m. and twelve o'clock midnight at intervals not greater than seven minutes. Any failure on the part of said company, its successors or assigns, to operate its road and run its cars as herein provided, shall be deemed a misdemeanor, and upon conviction thereof said company shall be fined for each offense, not more than one hundred dollars, and said company shall not run its cars at a greater rate of speed than eight miles an hour between Sixth street and Channing avenue, nor greater than fifteen miles per hour between Channing avenue and its western terminus at Forest Park, and shall not charge for a single continuous passage one way, over

its said line between its terminus at Sixth and Locust street
131 and its terminus at Forest Park, more than the rate author
ized by this ordinance, which shall be five cents for each rid
one way for an adult, or every person over the age of twelve years
and two and a half cents for a child under twelve years of age
Tickets for the use of children under twelve years of age shall b
sold in lots of not less than ten for twenty-five cents.

SEC. 6. Within sixty days after this ordinance shall become a law
said company shall file with the City Register its written acceptanc
of the provisions hereof and its penal bond to the City of St. Louis i
the sum of ten thousand dollars, with two or more sureties to be ap
proved by the Mayor and Council, conditioned that said compan
shall observe all the terms and conditions of this ordinance, an
shall hold the City of St. Louis harmless from the payment of al
damages and costs by reason of the construction, operation or main
tenance of said railroad, which bond shall be renewed from time t
time whenever demanded by the Mayor, and whenever a new bon
shall be demanded and given and approved by the Mayor and Coun
cil, it shall supersede the old bond, and thereupon the old bond shal
be cancelled and returned to the makers and the new bond file
with the Register of the city. Within six months from the date o
such acceptance said St. Louis Central and Western Railway Com
pany, its successors and assigns, shall in good faith begin the con
struction of said line of railroad, and within two years from the dat
of such acceptance, shall have its cars in operation from its terminu
at Sixth and Locust streets to the terminus at Forest Park, and th
terms of this franchise shall then exist in favor of said railway com
pany, its successors or assigns, for a period of forty-five years. An
unless said company shall commence and complete its road to it
western terminus at or near Forest Park, as herein provided, in th
manner and at the time by this ordinance provided the right
132 and privileges hereby granted by this ordinance shall ceas
and become void.

SEC. 7. Before constructing the railroad herein provided for, o
any part thereof, the said railway company, its successors or assigns
shall file in the office of the Board of Public Improvements of th
City of St. Louis, an accurate plan of the location of its tracks an
a profile of the same, and should the Board of Public Improvement
direct any change in the plan and profile, not inconsistent with th
general provisions of this ordinance, such change or changes shal
be made by said company, its successors or assigns, and after sai
plans and profile have been agreed upon, the work of constructio
shall be begun.

The laying of tracks along or across streets and alleys shall b
done so as not to unnecessarily interrupt or interfere with trave
thereon, and shall be done under the direction and to the satisfactio
of the Board of Public Improvements. The said railway compan
shall keep the streets between the rails and between the tracks, an
to the extent of twelve inches outside of each rail, in perfect repa
as nearly on a level with such rails as practicable, and that portio

outside the rails and between the tracks shall be of the same material as the street itself, and between the rails of the same or better material, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the repairing or reconstruction of said street; and provided further, that at all curves, switches and railway crossings, the space between the tracks and between the rails and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner. Said railway company shall construct its tracks with flat steel rails of pattern described and provided by general ordinance of the City of St. Louis.

133 SEC. 8. In consideration of the rights and franchises granted by this ordinance, said St. Louis Central and Western Railway Company, its successors or assigns, shall, beginning three years from the approval of this ordinance, pay to the Treasurer of the City of St. Louis, for account of the city, on the last day of December of each year, for the term of five years, the sum of one thousand dollars, and for the further period of five years the sum of two thousand dollars per annum, and from that time until the expiration of the rights and franchises granted by this ordinance, the sum of four thousand dollars per annum.

SEC. 9. If at any time the St. Louis Central and Western Railway Company its successors and assigns, shall acquire the right of way, roadbed, tracks and franchises of the St. Louis Cable and Western Railway, or any part thereof, then and in that event, such right or rights of way, railroad and franchises so acquired may be operated in connection with the railroad authorized by this ordinance, and may be maintained and operated by said St. Louis Central & Western Railway Company, its successors and assigns, free from the penalties, burdens and obligations imposed thereon by ordinances of the City of St. Louis, numbered twelve thousand eight hundred and fifty-two and thirteen thousand two hundred and eighty-two; and said St. Louis Central and Western Railway Company, its successors and assigns, may lay down and maintain all necessary connections by switches and otherwise between said railroad and right of way so to be acquired, and the railroad authorized by this ordinance.

Approved March 28, 1890.

134 [19,350.]

An ordinance authorizing the St. Louis and Suburban Railway C
pany to extend its tracks from its present terminus on Lo
street, near Sixth street, and construct a railroad over, along
across certain streets, in the City of St. Louis, and to operate
cars over and upon the tracks of certain other railroads, and
operate the same by electric power, and also authorizing the
Louis and Meramec River Railroad Company to join with
St. Louis and Suburban Railway Company in said construct
and to maintain and operate its cars over the same tracks
route with electric power, and authorizing said companies to o
ate ambulance and funeral cars and carry household supplies,
prescribing conditions for the rights hereby granted.

Be it ordained by the Municipal Assembly of the City of St. Lo
as follows:

SECTION 1. The St. Louis and Suburban Railway Company
the St. Louis and Meramec River Railroad Company, their suc
sors and assigns, are hereby authorized and empowered to extend
tracks of the St. Louis and Suburban Railway Company and
struct, operate and maintain their respective lines of railway as
lows: Beginning at a point in the south track of the St. Louis
Suburban Railway Company on Locust street, near the intersec
of Sixth street, thence eastwardly with a single track curve on Lo
street, connecting with the track of the Union Depot Railway C
pany on Sixth street; thence southwardly, over, along and upon
track of the Union Depot Railway Company on Sixth street to a p
where the tracks of the Southern Electric Railroad Company con
with the tracks of said Union Depot Railway Company on Si
street, near the north side of Pine street; thence south on and al
said Sixth street, over and upon the track of the Southern Ele
Railroad Company to a point near Elm street with the right to
all intervening streets and railroad tracks; thence eastwardly wi
single track curve connecting with the south track of the St. L
Railroad Company on Elm street; thence east on Elm street over
upon the south track of said St. Louis Railroad Compan
135 its terminus on Elm street near Broadway; thence east
Elm street with a single track over and across the tracks of
St. Louis Railroad Company on Broadway to the east line of Br
way; thence east on Elm street to the west line of Fourth street
a double track which may be used for such switching and stan
of cars as may be incidental and necessary to the regular busine
said companies; thence with a single curve track to connect
south track on Elm street with the east track of the People's Rail
Company on Fourth street; thence north over and upon said
track of the People's Railway Company to Locust street; thence
with a single curve track on Fourth and Locust streets and across
west track of said People's Railway Company to a connection
the north track of the Cass Avenue and Fair Grounds Railway
pany on Locust street; thence west over and upon said north t

and across the tracks of the St. Louis Railroad Company on Broadway to a point near Sixth street; thence west and across the tracks of the Cass Avenue and Fair Grounds Railway Company and of the Union Depot Railway Company on Sixth street to a connection with the north track of said St. Louis and Suburban Railway Company on Locust street near Sixth street; provided, however, that said companies may build, with proper curve connections with their track provided for above on Elm street and with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street near Fourth street, a temporary single track on Fourth street between Elm and Locust streets, east of and as near as practicable to the east track of the People's Railway Company, the east rail of said temporary track to be distant at least ten feet from the east curb of the street; and maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Com-
136 pany have been so reconstructed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company upon the east track thereof as provided above in this section, between Elm and Locust streets; said companies shall be required, and they hereby agree, to remove such temporary track and restore the street to its former condition, to the satisfaction of the Street Commissioner, whenever the tracks of the People's Railway Company are reconstructed as above provided, and said companies are able to begin the operation of their cars on the east track thereof.

If said companies fail to remove such temporary track when they are able to begin the operation of their cars upon the east track of the People's Railway Company, after the tracks of said last named company shall have been reconstructed as above provided, such failure shall work a forfeiture of all the rights and privileges granted by this ordinance and shall constitute a breach of the bond given under the provisions of this ordinance, and the city shall remove such temporary track and restore the street at the cost of said companies, such cost to be recovered by the city against the bond given under the provisions of this ordinance.

SEC. 2. Said lines of railroad hereby authorized shall be operated by electric power, either by storage battery conduits underground, the overhead wire system, through overhead and supplementary ground circuits, or any other electric system. Said companies may erect iron poles to carry overhead wires. The feed wire shall not be less than twenty feet above the surface of the street, said poles to be placed along the curbs of streets at such distances apart as may be deemed necessary for the safe and proper operations of said
137 railroads, and the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company may also construct, maintain and operate all curves, turnouts, switches, sidings, crossings, crossovers and connections, make all excavations which are reasonably necessary and convenient for the operation of their tracks along the route which they are by this ordinance authorized to use and occupy. The general plan,

character and location of the poles shall be submitted to and approved by the Board of Public Improvements.

SEC. 3. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, may run their cars over said route as hereby authorized, at a rate of speed not to exceed ten miles per hour.

SEC. 4. Whenever any of the streets through which the tracks of said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, authorized by this ordinance to be reconstructed, are laid, shall be repaired or reconstructed, said companies shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed to the satisfaction of the Street Commissioner, and said companies shall cause the grade of the roadbed and tracks authorized by this ordinance to be constructed to conform to the grades now or hereafter established of the streets in which said tracks are laid, and at all points where said railroads cross any of the streets of the City of St. Louis.

SEC. 5. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, shall, within sixty days after the approval
138 of this ordinance, file with the City Register their joint written acceptance of all the provisions hereof; and also their joint bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said companies, and each of them, jointly and severally, shall observe all the terms and conditions of this ordinance and all general ordinances of the City of St. Louis now in force, or that may hereafter be enacted in reference to street railways, and that they shall hold the City of St. Louis harmless from the payment of all or any damages and costs which may be established against the City of St. Louis by reason or on account of the construction, operation and maintenance of said railroads, or either of them, or by reason of the failure of said railway companies, or either of them, to comply with all the terms and conditions of this ordinance; which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond is demanded by the Mayor, and given by said railroad companies, and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers, and the new bond filed with the Register of the city.

SEC. 6. Said companies may run United States mail, ambulance and funeral cars, and cars for the transportation of family goods and supplies (excepting coal) over the tracks hereby authorized.

SEC. 7. In consideration of the rights and privileges granted by this ordinance, said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, their successors or assigns, each year, until the expiration of the rights and privileges granted by this ordinance, pay to the Treasurer of the

City of St. Louis, for account of said city, the sum of three
139 thousand five hundred dollars per annum, on the thirty-first of December of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

SEC. 8. The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

SEC. 9. This ordinance shall continue in force until February sixth, nineteen hundred thirty-six.

Approved April 5, 1898.

[19,393.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks running north on Union avenue, and to construct, maintain and operate its double track electric railroad along and across certain other streets and highways in the City of St. Louis, and to operate its said extension railroad by electric power, and to relinquish its rights to operate a certain portion of its said line or railway already constructed and operated on said Union avenue, and in Forest Park, under Ordinance number fifteen thousand nine hundred and fifty-four of the City of St. Louis, and to repeal section nine of said last named ordinance; also to operate funeral and ambulance cars, and to carry household supplies, and prescribing conditions therefor.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company, its lessees, successors and assigns, is hereby authorized and empowered to extend its double tracks running north and south on Union
140 avenue in said city, and to construct, maintain and operate a double track railroad, together with all necessary turnouts, switches, crossings, cross-overs, connections and loops, over, along and upon the streets, alleys and public places on the following route, viz: From a point where the railway or railroad of said St. Louis and Suburban Railway Company intersects Union avenue, being the most northerly point of its tracks, running and authorized to be constructed and operated north and south on said Union avenue, under ordinance number fifteen thousand nine hundred and fifty-four of said City of St. Louis; thence northwardly, with a double track, along and over said Union avenue, and across and along all intervening streets, alleys and public places to the Natural Bridge Road, thence over private property, or over and along Union avenue, whenever opened, to Bircher street; thence eastwardly on, over and along said Bircher street, and across and along all intervening streets, alleys and public places to Bernays avenue; thence northwardly on, over and along said Bernays avenue, and across and along all intervening streets, alleys and public places to Florissant avenue in said city; with the right to make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its said tracks along said route; Also to con-

struct, maintain and operate double tracks on Maple avenue from the western city limits east on Maple avenue to a connection with the present tracks of said company at or near the point where said tracks cross Maple avenue, at or near the intersection of Maple and Hodiamont avenue.

SECTION 2. Said extension of said line of railroad, as herein authorized, in connection with and as part of its present line of road operated under said Ordinance number fifteen thousand nine hundred and fifty-four, shall be operated by electric power, said
141 operation, at the option of said St. Louis and Suburban Railway Company, its successors and assigns, to be by storage battery on the cars, or by wire or wires placed in an underground conduit or conduits or by an overhead wire or wires supported by iron or steel poles, or of such other material as may be approved by the Board of Public Improvements of said city, under whose supervision all of said work is to be done. Said poles may be erected and placed either between the tracks of said railroad or along the curbs of all the streets on, over, across or along which said railroad may at any time be operated under this ordinance. The wires on said poles shall not be less than twenty feet above the surface of the street. The general plan, character and location of the poles and overhead wires will be submitted to and approved by the Board of Public Improvements.

Said railway company, its successors or assigns, shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the streets over which it constructs its said extension.

SECTION 3. The said St. Louis and Suburban Railway Company shall commence the work of construction of said extension within six months after the approval of this ordinance, and complete the same to the Natural Bridge Road within two years from said approval, and the balance of said road shall be completed within two years from and after the establishment of grade by the said City of St. Louis on the whole of said route and from and after the expiration of said two years last named, the said railway company, its successors and assigns, shall run passenger cars over its said extension of line of railway every day in the year during the life of this franchise, as follows: At intervals not exceeding ten minutes from six o'clock a. m. to midnight. Said railway company
142 shall not run its cars at a speed greater than fifteen miles an hour on said extension of its route. The fare from any point or station on said extension of said railway to any point on the line of said extension, or to any point on its main or branch lines operated under the authority given by Ordinance number fifteen thousand nine hundred and fifty-four or to any point on the St. Louis and Meramec River Railroad Company's line of railroad within the city limits, or from any point on said main line and branches operated under said Ordinance number fifteen thousand nine hundred and fifty-four, or from any point on said St. Louis and Meramec River Railroad Company's line within the city limits to any point on said extension, shall not exceed two and one-half cents for

persons under twelve years of age and shall not exceed five cents for persons over twelve years of age, for a continuous passage one way. And the said St. Louis and Suburban Railway Company shall issue to passengers who have paid regular fare, and who may request the same, the necessary transfer ticket, or tickets, entitling such passenger to immediate continued passage from the point where the transfer is made, over said extension line, or over said main line and its branches, as the case may be.

SECTION 4. Within sixty days after this ordinance shall become a law, said St. Louis and Suburban Railway Company, its successors and assigns, shall file with the City Register its written acceptance thereof and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said company will observe all the terms and conditions of this ordinance, and all general ordinances now in force, or that hereafter may be passed with reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs which may be established
143 against the said city by reason of the construction, operation and maintenance of said railroad, which bond shall be renewed from time to time, whenever demanded by the said Mayor, and whenever a new bond shall be demanded, given and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers and a new bond filed with the Register of said city.

SECTION 5. Said railway company, its successors or assigns, shall not allow any freight cars to be run over its lines, including this extension, excepting for the transportation of family goods and supplies (excluding coal), and for the use of persons living on or near the lines of said railroad, said company may run cars to carry such family goods and supplies, also United States mail, ambulance and funeral cars, from any point on this extension to and from its station about five hundred feet west of Vandeventer avenue, at a point where it leaves Morgan street to connect with its private right-of-way.

SECTION 6. The said railway company shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail, in perfect repair, as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street over which it runs or crosses, and between the rails, of the same or better material, to the satisfaction of the Street Commissioner; and said spaces shall be repaved and reconstructed as often and whenever the city shall by an ordinance direct the repairing or reconstruction of said street; and provided, that all curves, switches and railway crossings, space between the rails and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

SECTION 7. The said St. Louis and Suburban Railway Com-
144 pany shall relinquish and surrender to said city in part consideration of the rights, privileges and authority herein granted, its authority, license and permission given it by Section one

of Ordinance number fifteen thousand nine hundred and fifty-four, to construct and operate double tracks across the Wabash Railroad Company's tracks on Union avenue, to a point three hundred feet in Forest Park, and the southern terminus of said tracks shall be at a point on said Union avenue in the northern line of the right of way of said Wabash Railroad; and the acceptance of this ordinance, as provided by Section four hereof, shall be sufficient evidence of such relinquishment and release. Said railway company shall remove its tracks from said southern terminus established by this section to its present southern terminus in Forest Park, within ninety days from the approval of this ordinance, and shall restore the street to its former condition. Section nine of said Ordinance number fifteen thousand nine hundred and fifty-four shall be, and is hereby, repealed; such repeal, however, not to take effect until the acceptance of this ordinance, as provided by Section four hereof.

In consideration of the repeal of said Section nine of Ordinance number fifteen thousand nine hundred and fifty-four, and in lieu of the requirements thereof, the said railway company shall be required and hereby agrees to cause to be graded the alleys along its right of way west of Vandeventer avenue, and to build suitable retaining walls if necessary for such alleys east of Sarah street, said walls to be located so as not to interfere with the right of said company to occupy and use said alleys under provision of Section one of Ordinance number fifteen thousand nine hundred and fifty-four. Such improvements to be made according to plans and specifications submitted to and approved by the Board of Public Improvements; pro-
145 vided, however, that the said railway company shall not be required to expend more than twenty-five thousand dollars for such improvements. And said railway company shall also dedicate to public use and open and grade in lot twelve, City Block number three thousand seven hundred and fifty-four, an alley twenty feet wide from Morgan street to the alley which extends along the south side of its right of way.

SECTION 8. All of the provisions of said City Ordinance number fifteen thousand nine hundred and fifty-four, so far as the same are in force and apply to the present line of the St. Louis and Suburban Railway Company, shall continue in force and apply to the entire line of railway, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

SECTION 9. In consideration of the right and franchises granted by this ordinance, said St. Louis and Suburban Railway Company, its successors or assigns, shall, beginning two years from the approval of this ordinance, pay to the Treasurer of the City of St. Louis, for account of the said city, on the last day of December of each year, and for a term of five years, the sum of one thousand dollars, and from that time up to the year nineteen hundred and twenty the sum of two thousand dollars per annum and thereafter until the expiration of the rights and franchises granted by this ordinance, the sum of four thousand dollars per annum.

This ordinance and all the rights privileges and franchises hereby

granted shall continue in force until February sixth, nineteen hundred and thirty-six.

SECTION 10. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this ordinance, shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

SECTION 11. The St. Louis and Suburban Railway Company, in accepting this ordinance, agrees to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force or which may hereafter be enacted and applicable to its entire line of railroad or any part thereof.

Approved June 10, 1898.

146 [19,954.]

An Ordinance to reconstruct alley in city block number eight hundred and ninety-four.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause alley in city block number eight hundred and ninety-four from Eighteenth street to Nineteenth street, and between Market street and Chestnut street, to be reconstructed by taking up and removing the old pavement, preparing ground for the superstructure, laying a roadway pavement of vitrified paving block on a concrete base and making all proper connections and intersections with other streets and alleys.

SECTION 2. The base shall be a bed of hydraulic cement concrete and the paving shall be the best quality of vitrified paving block, laid on a bed of sand.

SECTION 3. The old pavement shall be removed and the ground for the superstructure prepared to a depth of twelve and one-half inches below the intended surface of the roadway. On the roadbed a base of hydraulic cement concrete, six inches deep, shall be laid; on this base there shall be placed a pavement of the best quality of vitrified paving block. The blocks shall not be less than nine inches nor more than twelve inches long; not less than three and one-half inches nor more than four and one-half inches wide; not less than five inches nor more than six inches deep; they shall be set on edge on a bed of clean, coarse sand of sufficient depth to bring the upper surface of the blocks, after they have been well rammed, to the true surface of the pavement. The joints shall be completely filled with grout, composed of one part best Portland Cement to one part of sand.

SECTION 4. The cost of the foregoing work and all proper connections and intersections required shall be charged as a lien upon the adjoining property fronting or bordering on the improvements herein provided for and shall be paid by the owners thereof. When said work is completed the President of the Board of Public Improvements shall compute the cost thereof and levy and assess the

same as special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf of the contractor, bills of such cost and assessment accordingly, as required by law.

Approved February 23, 1900.

147 [19,550.]

An ordinance to partially improve Neosho street between Broadway and Michigan Avenue.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause Neosho street, between Broadway and Michigan avenue, to be partially improved by grading, preparing ground for the superstructure, laying on the roadway a sub-foundation of rough rock, twenty feet wide, and placing thereon a course of macadam, with a binding material and a top dressing of gravel, and making all proper connections and intersections with other streets and alleys.

SEC. 2. The sub-foundation of rough rock and the macadamizing shall be of limestone, the binding material shall be of loam, sand or macadam screenings, and a top dressing of gravel shall be used to cover the surface of the roadway.

SEC. 3. The grading shall be done in accordance with the directions of the Street Commissioner. The ground for the superstructure shall be prepared and the roadbed properly formed to a depth of fifteen inches below the intended surface of the roadway. On this roadbed there shall be placed a sub-foundation of rough rock, six inches deep and a layer of broken stone of macadam nine inches deep, which shall be well compacted by rolling, after which the void spaces shall be filled with loam, sand or macadam screenings by flushing with water. On the surface thus formed there shall be spread a covering of gravel. The whole shall then be well rolled.

SEC. 4. The cost of preparing ground for the superstructure, sub-foundation of rough rock, macadamizing, binding material, top-dressing, rolling and all proper connections and intersections, shall be charged as a lien upon the adjoining property fronting or bordering on the improvement herein provided for, and shall be paid by the owners thereof. When said work is completed, the President of the Board of Public Improvements shall compute the cost thereof, and levy and assess the same, as a special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf

of the contractor, bills of such cost and assessment, accordingly, as required by law.

SEC. 5. The cost of the grading shall be paid by the City of St. Louis, and the sum of three hundred dollars is hereby appropriated on account thereof, payable out of the fund set apart for street improvements.

Approved November 25, 1898.

148 [21,087.]

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. *St.* Louis" by striking out said sections and inserting new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not
ister or indicator, capable of registering passengers to a number not
less than nine thousand nine hundred and ninety-nine, and
149 upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five
A, and for that purpose shall have access at all reasonable
150 times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every Person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-

five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

151 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

I, James R. Gray, acting by consent of parties as Special Examiner herein, do certify that in the above entitled causes now pending and undetermined in the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, there personally appeared before me at my office, Room No. 342 Custom House Building, Eighth, Ninth, Olive, Locust streets, St. Louis, Mo., on Tuesday, the Seventh day of November, A. D. 1905, at 10:30 o'clock A. M., and on divers days thereafter to which the hearing was from time to time adjourned, as appears from the record thereof, Mr. Jefferson Chandler on behalf of the complainants

herein and Mr. Wm. F. Woerner on behalf of the Defendants herein, and E. P. Sommers and J. S. Walsh, Jr., witnesses produced on behalf of the Complainants herein; that the depositions of said witnesses were taken by consent of counsel of the respective parties, formal notice therof being waived by counsel for Defendants; that each of the said witnesses was by me duly sworn in the said cause and his deposition by counsel of parties reduced to writing from short hand notes taken and transcribed under my direction by a skillful stenographer, and read and subscribed by said witnesses in my presence, as appears in the record; that said depositions, as taken down in typewriting, are returned herewith to the Court in which said cause is pending.

I do hereby further certify that I am not of counsel or attorney for or related to either of the parties in this cause, or directly or indirectly interested in said suit, and that my fees amounting to $25.20 have been paid to me by Jefferson Chandler of counsel for Complainants.

In testimony whereof, I have hereunto set my hand this 23rd day of November, A. D. 1905.

JAMES R. GRAY, *Examiner.*

152 And afterwards, to-wit: on the 6th day of June, A. D. 1906, the following among other proceedings were had and appear of record in said cause, to-wit:

4987.

ST. LOUIS AND SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Now at this day this cause is argued by counsel and submitted to the Court.

And afterwards, to-wit: on the 17th day of September, A. D. 1906, the following further proceedings were had and appear of record in said cause, to-wit:

4987.

ST. LOUIS AND SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Decree.

This cause having been heretofore submitted to the Court, upon the evidence and proofs adduced and the Court being fully advised concerning the premises, it is now

Ordered, adjudged and decreed by the Court, that the defendant, City of St. Louis, its officers and agents, be, and they are hereby perpetually enjoined and restrained, from in anywise asserting or seek-

ing to enforce any of the provisions of an alleged ordinance of the said City, numbered 21,087 assumed to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, on cars used by them over its street railway in the City of St. Louis; that the said City of St. Louis, its officers and agents, and each of them be and they are hereby likewise enjoined and restrained from in any manner, by suit or otherwise, asserting or enforcing said alleged ordinance *b*umbered 21,087 against the complainant, and that complainant recover of said defendant its costs and
153 charges herein expended and have execution therefor.

(Signed) G. A. FINKELNBURG, *Judge.*

September 17, 1906.

And afterwards, to-wit: on the 11th day of December, A. D. 1906, the following further proceedings were had and appear of record in said cause, to-wit:

(*Order Allowing Appeal, etc.*)

4987.

ST. LOUIS AND SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Now comes said defendant by its solicitor and files and presents to the Court its Assignment of Errors and Petition for Appeal from the final decree heretofore rendered herein to the Supreme Court of the United States; upon consideration whereof, it is

Ordered that said petition be and it is hereby granted and that said defendant give an appeal bond for costs in Five Hundred Dollars; thereupon the said defendant presents such a bond conditioned as required by law, which is approved and ordered filed, and it is

Further ordered that the Clerk of this Court make out and certify to the said Supreme Court a full, true, and complete transcript of the record and proceedings in this cause. Citation issued and filed.

G. A. FINKELNBURG, *Judge.*

December 11th, 1906.

Which said Assignment of Errors, Prayed for Appeal, and Bond are respectively in words and figures as follows, to-wit:

154 (*Assignment of Errors.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

Comes now the City of St. Louis, defendant in the above entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons;

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis impaired the obligations of any of the Special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to construct, operate and
155 maintain street railways in said City, precluded the defendant the City of St. Louis from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license tax by virtue of the special franchise ordinance granting it, or its assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St.

Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its Charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant The City of St. Louis prays that the decree of the Circuit Court be reversed, and that said Court be di-
156 rected to enter a decree in favor of said defendant.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitor- for Defendant.

(Prayer for Appeal to the Supreme Court.)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4987. In Equity.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

Petition for Appeal.

Now comes the City of St. Louis, the above-named defendant by its solicitor-, and conceiving itself aggrieved by the final decree made and entered on the seventeenth day of September, A. D. 1906, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made and entered, duly authenticated, may be sent to said Supreme Court of the United States, at the City of Washington, D. C.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for said Defendant.

St. Louis, Mo. Dec. 12, 1906.

(Bond.)

Know all men by these presents,

That we, The City of St. Louis as principal and Rolla Wells as surety are held and firmly bound unto the St. Louis and Suburban Railway Company in the full and just sum of Five Hun-
157 dred Dollars to be paid to the said St. Louis and Suburban Railway Company or its successors or assigns; to which pay-

ment well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents. Sealed with our seals and dated this 12th day of December in the year of our Lord one thousand nine hundred and six.

Whereas, lately at the September term A. D. 1906, of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between St. Louis and Suburban Railway Company plaintiff and The City of St. Louis defendant final decree was rendered against the said defendant and the said defendant has obtained an appeal of the said Court to reverse the final decree in the aforesaid suit, and a citation directed to the said St. Louis and Suburban Railway Company citing and admonishing it to be and appear in the Supreme Court of the United States at the City of Washington D. C., thirty days from and after the date of said Citation.

Now the Condition of the above obligation is such, That if the said City of St. Louis shall prosecute said appeal to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of
Attest

CITY OF ST. LOUIS, [SEAL.]
[SEAL.] By ROLLA WELLS, *Mayor.* [SEAL.]
ROLLA WELLS. [SEAL.]
PATRICK J. REGAN, *Register.*

Approved
G. A. KINKELNBURG, *Judge.*

158 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4987.

ST. LOUIS AND SUBURBAN RAILWAY CO.
vs.
CITY OF ST. LOUIS.

For the reasons stated in the opinion filed in the case of United Railways Company *vs.* City of St. Louis, No. 4985, I am of opinion that the temporary injunction heretofore issued in this case should be made permanent, and it is so ordered.

Which said opinion filed in said case No. 4985 is in words and figures as follows, to-wit:

159 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS
vs.
CITY OF ST. LOUIS.

FINKELNBURG, *District Judge:*

After a careful examination of the record as now presented, I am persuaded to adhere to the position heretofore taken by Judge Adams at the preliminary hearing of this case, and for the reasons then so well stated by him in his opinion, viz: the inviolability of the contracts entered into between the City on the one hand and the Railway Company on the other hand.

Single detached provisions may indeed be quoted from constitution and city charter which, taken by themselves, would seem to authorize the passage and enforcement of the ordinance here in controversy. But of course these instruments must be construed as a whole and effect given the other portions of them.

In brief, I find that under the constitution, laws and city charter applicable to this subject the City of St. Louis had a right to enter into contracts with reference to the construction and operation of these street railways—that it did enter into such contracts and fixed the terms—that a contract having been entered into its terms were not open to alteration thereafter by the City alone—that ordinance No. 21087 is an attempted violation of the terms of said contracts—that therefore its enforcement ought to be enjoined.

Counsel for defendant in their brief (p. 61) admit that, "if the city had attempted by ordinance to increase the special amounts of fixed sums or on gross receipts that the various companies had contracted to pay in the ordinance conferring these franchises"
160 then the ruling in Detroit *vs.* Railway, 184 U. S. 368, would apply, because they say, "on that point there *was* a contract"; but they contend that in the case at bar no such attempt was made; that the City simply amended its license tax on street cars, and that as to this there never was any contract. I cannot agree with this view of the situation. We must look at the substance, not names. The so-called amended license tax is an exaction of two per cent. on the gross earnings of the complainant's railways *in addition* to what was specially agreed upon as a consideration for the right to construct and operate these railways. The substance and true meaning of such a provision cannot be changed by calling it by another name. As a contract is obligatory on the citizen so it must be binding on the public authority. As Judge Adams well said in the opinion referred to:

"If the City can after once exercising its power and fixing the terms and conditions of its grant, change them in one particular, it can in all. If it can increase the once fixed charge for occupying the streets (called license tax) by 2 per cent. on the gross income it can exact 50 per cent. or more, and of course can utterly destroy the value of the complainant's property. It is this kind of evasion

of property rights which in my opinion the Constitution of the United States (Sec. 10, Art. I) is intended to prevent."

As to the power of the Municipal Assembly to deprive itself of the further right to enforce taxes by contract, the distinction between general taxes and so-called license taxes must be borne in mind. The latter are not within the usual constitutional prohibitions against exemptions, etc. The Municipal Assembly may license or not license a particular occupation or business, or it may exact a license tax for a number of years and exhaust its power to
161 exact any more, as I think it has done in this instance.

The contention that the prior ordinances under which these railways were constructed confer rights of way only, but not the right to use them, or, as defendant's counsel put it, a right "to be" but not "to do," strikes me as an unreasonably narrow construction of thos- prior ordinances. The granting part of these ordinances all contain the words: "To construct, maintain and operate," or words equivalent thereto. But this point is also fully considered by Judge Adams, whose entire opinion I adopt for the purpose of this decision.

In view of the premises I am of opinion that the temporary injunction heretofore issued in this cause should be made permanent, and it is so ordered.

162 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, James R. Gray, Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a full, true and complete transcript of the record and proceedings In case No. 4987 of St. Louis and Suburban Railway Company Plaintiff, *vs.* City of St. Louis Defendant, as fully as the same remains on file and of record in said case in my office and that the original citation is hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at office, in the City of St. Louis, in the Eastern Division of said District, this fifth day of January in the year of our Lord, nineteen hundred and seven.

[Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri,]

JAMES R. GRAY,
Clerk of Said Court,
By —— ——, *Deputy.*

[Endorsed:] No. 4987. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. St. Louis and Suburban Railway Co. against City of St. Louis. Duly Certified Transcript of the Record and Proceedings in the above entitled cause.

Endorsed on cover: File No. 20,520. E. Missouri C. C. U. S. Term No. 194. The City of St. Louis, appellant, *vs.* The St. Louis & Suburban Railway Company. Filed January 10th, 1907. File No. 20,520.

Office Supreme Court, U. S.
FILED.
MAR 10 1908
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 194.)

THE CITY OF ST. LOUIS,
Appellant,
vs.
ST. LOUIS AND SUBURBAN RAILWAY,
Appellee.
No. 20,520.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

APPELLANT'S STATEMENT OF THE CASE.
ASSIGNMENT OF ERRORS.
POINTS AND AUTHORITIES.
ARGUMENT.

CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant, City of St. Louis.

J. W. Steele & Co., Prs., 18 N. Third, St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 194.)

THE CITY OF ST. LOUIS,
Appellant,
vs.
ST. LOUIS AND SUBURBAN RAILWAY,
Appellee.
No. 20,520.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT OF THE CASE.

This is a companion case to that of the preceding one on the docket (No. 193, term number, or No. 20519; City of St. Louis vs. United Railways & St. Louis Transit Co.)

This case is nearly identical with the other, at least so far as any questions of law are concerned.

This cause is an injunction proceeding, brought originally by the complainants (here appellees) by bill in equity filed on April 23, 1904, in the Circuit Court of the United States

for the Eastern Division of the Eastern Judicial District of Missouri, against the City of St. Louis (here appellant) to restrain the latter from enforcing the provision of an ordinance known as No. 21,087, herein below referred to, passed by its legislative body, termed the Municipal Assembly.

The jurisdictional ground alleged is conflict with the impairment of contract clause of the United States Constitution (Section 10 of Article I) and deprivation of property without due process and denial of equal protection of the law (Article XIV of Amendment). The allegations and contentions of the bill and answer are more fully stated below.

A preliminary injunction was awarded by the Court, and made permanent upon final hearing.

The case was heard upon bill, answer, stipulation and certain testimony for complainants (Print. Rec., pp. 50-72). Appeal was duly granted, assignment of errors filed, bond given, and the case duly brought to this Court.

There is little controversy as to the essential facts.

The appellant, City of St. Louis, is a municipal corporation organized under a charter in pursuance of a Special Constitutional Provision, Article IX, Sections 20 to 25 inclusive of the Missouri Constitution of 1875.

The charter provisions authorizing the above ordinance are referred to hereinafter.

The complainant (appellee here) at the time of the institution of this cause was a Missouri corporation engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways. The company operated its cars also beyond the city limits into St. Louis County.

Statement of the Case.

Complainant is the successor of the St. Louis Central & Western Ry. Co., and the St. Louis Cable & Western.

The St. Louis Central & Western received its franchise under ordinance 15,547, approved March 28, 1890 (print. rec., p. 79), under section 8 of that ordinance it acquired the St. Louis Cable & Western. The St. Louis Cable & Western was a narrow guage steam road operated nearly or wholly outside the city limits; it does not, we believe, appear that it obtained any franchise from the city.

Complainant acquired the franchise of the St. Louis Central & Western under ordinance 15,954 (Feb. 6, 1891, print. rec., p. 73), as well as its own franchise rights.

Ordinance 19,350 (April 5, 1898) authorized extensions to complainants and St. Louis & Meramec River Road, and conferred certain other powers not here material. (Print. rec., p. 84.)

Ordinance 19,393 made certain further extensions, etc. (June 10, 1898; print. rec., p. 87).

At the institution of this suit complainant represented about all the street cars in St. Louis except the system of the United Railways or Transit Company (which are here as respondents in cause 20,519 in this court, and which, if there is no impropriety in stating what does not appear in the printed record, it may be suggested, also absorbed complainant since the appeal in this cause was taken). But at the institution of the suit complainant appears as the successor or assignee of a number of former street railway companies which received their respective franchises to operate their lines within the City, from time to time by independent special ordinances.

These "special" or franchise ordinances, for the old rail-

way lines as well as those to complainant, are more particularly referred to hereinafter.

The general ordinance attacked in this cause is known as No. 21,087, and is set out in full in the pleadings and in the agreed statement in the transcript of the Record (Print. Rec., pp. 93-95). This ordinance was enacted and approved March 25th, 1903. It provides that every person, etc., corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay the License Collector of said City, a quarter annual license for each and every car used by them in transporting passengers, "the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months" (Print. Rec., p. 93). The manner of equipping cars to show the number of passengers carried, and the filing of a report, is also provided for. A refusal to comply with the terms of the ordinance is made a misdemeanor punishable by fine (which is, however, not a criminal but a civil proceeding in Missouri). The ordinance further provides that the license-tax therein called for shall not be construed as exempting or excusing the payment "of any sum agreed, assumed or required to be paid by the terms of any special ordinance or agreement or contract, nor as affecting the same in any way, nor as impairing or affecting any license theretofore obtained."

Set out in full, this ordinance is as follows (Print Rec., p. 93):

(21,087).

"An ordinance to amend Sections twenty-one hundred

and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transportating passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-

FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in contiuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number of figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number of

figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table, and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties

of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license, and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed

as impairing or affecting any license heretofore obtained.

Approved March 25, 1903."

It is to be observed that the ordinance does not call for a percentage of gross receipts at all, but for a license tax on each separate car operated, the amount of which is to be determined as above stated.

This ordinance 21,087, imposing the aforesaid license tax is not an imposition for the first time of a license-tax on each street car from and after its passage in March, 1903, but on the contrary purports to be and is merely an amendment of the street car license-tax which was in force at the time and for many years theretofore had been in force, and was in force when all of the franchise ordinances were passed, and which fixed the license-tax at $25.00 for each car per annum. (See print. rec., p. 61 and p. 68). The function of the amending ordinance of 1903, No. 21,087, was mainly to substitute for this fixed sum of $25.00, a sum equal to one mill per passenger on each car.

All of the railway companies constituting the assignors of complainants (whose rights were acquired), as well as complainant itself, at all times complied with the old ordinance, and they have at all times paid the sum of $25.00 per car required to be paid under said ordinance, and continued so to do until the going into effect of Ordinance 21,087 (Print. rec., p. 61 and p. 68).

But upon the passage of the latter, complainant refused to comply with any of its provisions; and when the City served the required notice and threatened to enforce the ordinance against complainant, it instituted this cause to restrain it, on the alleged ground as stated in the bill that the ordinance operated to impair the obligations of contracts

between them and the City, and to deprive complainants of their property without due process of law and to withhold from them the equal protection of the laws, and was hence unconstitutional as in conflict with Section 10, of Article I of the United States Constitution, and Article XIV of the Amendments. (Print. Rec., p. 14).

The bill alleges that said ordinance 21,087 does not call for "a license fee but is an additional unequal charge and compensation assumed to be and is exacted from this complainant as a consideration for rights and franchises already granted to it by contracts with the City of St. Louis and paid for by complainant in accordance with the provisions of said contracts." (Print. Rec., p. 14, par. 17.)

The bill sets out with particularity all the various constitutional and charter provisions involved, with the conspicuous exception of the one vital provision in pursuance of which the said ordinance 21,087 was really enacted, namely the charter right "to license, tax and regulate street cars," which the bill entirely ignores.

The answer sets forth the various defenses to the allegations of the bill, and specifically declares the right of the City to enact the said ordinance 21,087 as a license tax under charter provisions in the answer set up (and hereinbelow given in full), and denies that the special franchise or right-of-way ordinances pleaded as contracts in the bill, can be construed as exercising or surrendering the right of the City to impose the license tax provision in ordinance 21,087.

To be a little more specific, the answer, after setting forth what parts of the bill of complaint are denied and what admitted, and after setting out certain constitutional and char-

ter provisions (amongst them in par. 6 the right to amend, alter or repeal a grant in whole or in part) then goes on in paragraphs 7, 8, 9 and 10 of said answer to set forth its main defense which, since they may be taken as indicative of the main position of the defendant City, we may be pardoned in quoting, as follows: (Print Rec., pp. 42-46):

> (7) And defendant states that having exclusive and plenary power under the Constitution, statutes, charter provisions and laws of the State to grant or withhold its consent to the complainant and its assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did, when complainants desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainants' bill and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainant and their assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise or right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a license fee for the exercise

of such right so conferred on the aforesaid conditions, nor to require payment of a general property tax on complainants' property.

(8) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainant's bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its charter Article III, Section 26, clause 5th, by ordinance, to license, tax and regulate street railroad cars (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21,087, approved March 25, 1903 (being the same the enforcement of which complainants seek to enjoin), which is as follows, to-wit:

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the 'Municipal Code of St. Louis' by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

[Here follow the provisions of ordinance 21,087 which have been hereinabove set out in full, so the same is omitted here.]

(9) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privileges conferred upon the complainant or any of their assignors; that the obligations assumed by complainant and its assignors in the respective ordinances conferring franchises, rights and privileges were in no sense license fees or license taxes upon street cars, but only conditions under which the city consented that said complainant and their assignors could obtain the valuable rights to the use of its streets, and in no way operated to exempt complainant from the imposition of license taxes and fees for the exercise of their business and the rights conferred by said franchises. On the contrary defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25 each year on each street car operated by any street car company and which license fee and tax complainant had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said company upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And defendant further states that when said complainant accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned, and, that it at all times, and all the assignors of said company, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21,087.

And defendant specially denies that the amount re-

quired to be paid is as alleged by complainant "absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it and to the proper discharge of the obligations imposed upon it by the several special ordinances" by it set forth or cast a cloud on the title of the properties of complainant, which impairs its credit.

Defendant states that said license fee or tax is perfectly lawful and reasonable, and does not interfere with the conduct of complainant's business, but that if complainant is unable or indisposed to continue its said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790a of ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of its said franchises and chartered rights, which action complainant has declined to adopt, but on the contrary in open violation of said ordinance 21087, operates street cars and engages in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10). Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies equally with complainant, and that it agreed on June 16, 1898, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinances 19392 and 19393 and referred to in said complainant's bill, and without which the same would not have become effective, to accept all obligations therein imposed on said complainant, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways; and said respective assignors of complainant entered into similar agreements as a condition permit-

ting them to assign such rights or franchises to complainant, wherein said assignors and each of them agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

[In the record as printed, some of the phrases appear in italics; but this is from a cause unknown to this defendant, as in the answer as filed there were no italics used, and the same should be read as if there were none.]

The replication amounts to a general denial of new matter.

The contention of the railway companies, as we understand it, is not that the City of St. Louis had no right to enact this general ordinance in question. It is that the same cannot be made applicable to them because, in the diverse and sundry prior special ordinances (by which the City enfranchised complainant and its assignors, whose rights, privileges and franchises the latter has acquired) the City imposed certain obligations and conditions, amongst which were the payments of certain sums, the repair of streets between rails, etc. (hereinbelow more fully stated), which were themselves an exercise by the City as against appellees of its power to impose license-taxes, and therefore operated as contracts which exhausted the right to impose any further license taxes for the operation of the cars.

The main contention of the City of St. Louis, as set forth in its answer, is, on the other hand, that all of these considerations and payments called for in the special or franchise ordinances to the assignors of the complainant company were merely the contract price of obtaining the consent of the City required by the Constitution of the State, and Charter of the City, and were in no sense

license taxes, and did not affect the power of the City to enact a license tax on each car.

[It is our recollection that for the convenience of the Court all the provisions of the Constitution, Statutes and Charter here in question were collected and set out in a statement, agreed upon as correct (as in the preceding case No. 193—United Railways Case on this docket) and should appear in the record; but by some inadvertence the same were not carried into the record; we presume, however, that this is immaterial as under the Constitution of Missouri the Court below (hence this Court on appeal) takes cognizance of the charter, since the Constitution of Missouri provides in Article IX, Sec. 21, that respecting the St. Louis City Charter "all courts shall take judicial notice thereof."]

The provision of the Missouri Constitution referred to in the answer, is Article XII, Section 20 (Print. Rec., p. 41), as follows:

> "No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

The provision of the City Charter under which ordinance 21087 (and the former ordinance which it amended, which provided for a license tax of $25.00 per annum on each car) was enacted, is found in Article III, Section 26, Clause 5 (see same set out in full below). This clause confers au-

thority on the City "to license, tax and regulate" many kinds of business and vocations, and a multitude of different kinds of vehicles, conveyances, etc., all specifically enumerated, amongst which appear "street railroad *cars.*"

This clause in full is as follows (Charter, Article II, Section 26, Clause 5):

> "Fifth.—TO LICENSE, TAX AND REGULATE VARIOUS KINDS OF BUSINESSES, ETC.; FIX RATES FOR CARRIAGES, DRAYAGE, ETC.; REGULATE WIDTH OF TIRES—TO SUPPRESS CERTAIN OCCUPATIONS AND AMUSEMENTS.—To license, tax and regulate lawyers, doctors, doctresses, undertakers, dentists, auctioneers, grocers, merchants, retailers, hotels, boarding houses, tenement houses, office buildings, public buildings, public halls, public grounds, concerts, photographists, artists, agents, porters, runners, drummers, public lectures, public meetings and shows, real estate agents and brokers, financial agents and brokers, horse and cattle dealers, patent-right dealers, inspectors and gaugers, stockyard proprietors, examiners of titles, conveyancers, mercantile agents, insurance companies and insurance agents, bankers, banking or other corporations or institutions, telegraph companies or corporations, *street railroad cars,* livery and sale stables, hackney carriages, private carriages, barouches, buggies, wagons, omnibuses, carts, drays and other vehicles, and all other business, trades, avocations or professions whatever; to fix the rate for carriage of persons, and of wagonage, drayage and cartage or property, and regulate the width of the tires of all vehicles for heavy transportation; to license, regulate, tax or suppress ordinaries, hawkers, peddlers, brokers, pawnbrokers, money changers, intelligence offices, public masquerade balls, street exhibitions, dance houses, fortune tellers, pistol galleries, lottery ticket dealers, corn doctors; lock, private and venereal hospitals, museums and menageries, equestrian performances, horo-

scopic views, lung testers, muscle developers, magnifying glasses, billiard tables or any other tables or instruments used for amusement; circuses, operatic, theatrical and other exhibitions; shows and amusements, saloons, beer houses, tippling houses, dram shops, and gift enterprises; and to suppress prize fights, coon fighting, dog fights, chicken cock fights, gaming or gambling houses; and to suppress bawdy and disorderly houses, houses of ill-fame and of assignation; to provide for and enforce the registration of all births, marriages or deaths; to license, tax, regulate or suppress all occupations, professions and trades not hereinbefore enumerated, of whatever name and character."

The provisions of the City Charter, under which the numerous special ordinances were enacted which conferred authority upon the various street-car lines assigned to and acquired by appellees, are found in Article X, Section 1-5 of the Charter, and are as follows:

"Section 1. AUTHORITY OF MUNICIPAL ASSEMBLY IN REFERENCE TO STREET RAILROADS—MAY SELL FRANCHISES OR IMPOSE A PER CAPITA TAX OR A TAX ON GROSS RECEIPTS.—The Municipal Assembly shall have power by ordinance to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right of way, or regulating and controlling them after their completion; and also shall have power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a per capita tax on the passengers transported, or an annual tax on the gross receipts of such railroad, or on each car, and no street railroad shall hereafter be incorporated or built in the City of St. Louis except according to the above and other conditions of

this Charter, and in such manner and to such extent as may be provided by ordinance.

Sec. 2. MAY REGULATE RUNNING OF CARS AND RATES OF FARE AND TAX PROPERTY.—The Assembly shall have power to regulate the time and manner of running cars, and the rates of fares on street railroads now or hereafter to be built, and the sale of tickets and exchange therefor between the several companies and to tax the property of street railroad companies in such manner as may be provided by law.

Sec. 3. SURRENDER OF FRANCHISES, HOW EFFECTED.—Any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indisposition, and surrender thereby all their chartered rights or franchises, in such manner and under such terms and conditions as may be provided by ordinance.

Sec. 5. COMPANIES TO KEEP STREET BETWEEN RAILS IN REPAIR.—Street railroad companies shall keep the street between the rails, and to the extent of twelve inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails shall be of the same material as the street itself, and the Municipal Assembly shall provide by ordinance that bond or other security shall be given by the several companies, conditioned for a compliance with the provision of this section."

And in this connection we may refer to the Charter, Article III, Section 26, Clause 11, which confers general power on the city:

"Eleventh.—TO PROTECT RIGHTS OF CITY IN CORPORATIONS—GRANT, REGULATE AND REPEAL RAILWAY FRANCHISES—FREE PASSES ON STREET RAILWAYS PROHIBITED.—To take all needful steps in and out of the State, to protect the rights of the city, in any corporation in which the city may have acquired an interest;

to have sole power and authority to grant to persons or corporations the right to construct railways in the city, *subject to the right to amend, alter or repeal any such grant in whole or in part,* and to regulate and control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles; but every right so granted shall cease, unless the work of construction shall be begun within one year from the granting of the right, and be continued to completion with all reasonable practical speed, and it shall be the cause of forfeiture of the rights and privileges derived from the city, of any railroad company operating its road only within this city, which shall allow any person to ride or travel on its road gratuitously or for less than usual price of fare, unless such person be an officer or employe of such company."

The numerous special or right-of-way ordinances by which complainant and the respective independent street railway companies (which were subsequently consolidated or merged into it were originally authorized to operate in the City of St. Louis, are set out in full in the record (Print. Rec., pp. 72-92). [The complainant by mistake introduced also several ordinances which have no connection with the case, being on foreign subjects (Ord. 19,950 and 19,954, pp. 37, 38), but we believe the issues can fairly be determined without reference to the ordinances which we suppose were really intended to go into the record in their stead.]

These right-of-way ordinances are those which the appellee claims to contain the clauses which are alleged to be an exercise of the City's charter power to license and tax street cars, and that hence that power was thereby exhausted as to appellee, so that when subsequently ordinance 21,087, imposing a license-tax, was enacted, it is alleged to operate as an impairment of the contract-ordinances; or,

differently stated, that the appellee claims to be exempted from the operation of ordinance 21,087 because of the terms of said special ordinance relating to itself and its respective assignor companies.

It is therefore essential, for a proper understanding of this cause, to set out such provisions of these numerous ordinances as may bear on this contention.

The granting part of the said franchises or rights-of-way conferred thereby is in nearly all instances, substantially or literally, to the respective company in question "to operate, maintain and construct" or "to lay down, construct, operate and maintain" or "to reconstruct its tracks and maintain and operate its railway thereon," etc., over certain designated streets. These franchise privileges are conferred upon certain conditions and burdens imposed in these ordinances, the compliance with which complainant says exempts it from paying license-taxes, but which the ordinances say are assumed by complainant (or its respective assignors) as a consideration for the franchise rights conferred. These burdens consist of payments of certain fixed sums payable each year, and also the repair of the streets within the tracks, limit of fare to be charged, and similar conditions herein below specifically set out.

An examination of these ordinances shows that such burdens (particularly payment of fixed amounts to the City per annum) are expressed to be assumed by the grantees *"in consideration of the rights, privileges and franchises hereby granted"* or "rights and franchises granted in this ordinance" (or similar words), etc. Such is the language in the following ordinances, set out in the bill and printed agreed statement, to-wit:

Ord. 15,547, sec. 8, print. rec., p. 83 (St. L. Cent. & W.).

Ord. 19,350, sec. 7, print. rec., p. 86-87 (St. L. & Sub.).
Ord. 19,393, sec. 9, print. rec., p 90 (St. L. & Sub.).

The said burdens "in consideration" of which the franchises were conferred, are to the effect that "the said company shall pay to the City of St. Louis," certain fixed sums per annum (in most instances increasing per year as the franchise ages). This is the case in the following ordinances, to-wit:

Ord. 15,547, sec. 8, print. rec., p. 83 (St. L. Cent. & W.).
Ord. 19,350, sec. 7, print. rec., 86-87 (St. L. & Sub.).
Ord. 19,393, sec. 9, print. rec., p. 90 (St. L. & Sub.).

The above particularly are the clauses calling for the payments claimed to be in lieu of, or as exempting from, the license-tax in question, and are the provisions relied upon by complainants, and special attention is directed thereto.

In some of these ordinances there appear further conditions, for instance, that such payments are to be "in addition to all taxes, *and payments* as now or hereafter prescribed by law," etc. So in case of complainant:

Ord. 19,350, sec. 7, print. rec., p. 86-87.

And in the same ordinance to complainant, "the City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time."

Ord. 19,350, sec. 8, (print. rec., p. 87).

Other, though less important, of the burdens imposed, are that the companies keep the space between the rails and 12 or 18 inches on each side, paved and repaired. We believe every one of the ordinances contains this provision.

It is also stipulated that work be begun on the tracks, or completed, within a certain time. So in ordinances 15,594, sec. 3, (p. 75); 15,547, sec. 6 (p. 82); 19,393, sec. 3 (p. 88).

And in others that the fare charged be not in excess of a certain sum, usually five cents. So in these ordinances:

Ord. 15,594, sec. 3, print. rec., p. 76 (St. L. & Sub.).
Ord. 15,547, sec. 3, print. rec., p. 82 (St. L. C. & W.).
Ord. 19,393, sec. 3, print. rec., p. 88 (St. L. & Sub.).

An important point is that the complainant and its predecessors agree to comply with the provisions of all general ordinances and charter provisions affecting street railways that may now be in force or which may hereafter be enacted.'

Ord. 19,393, sec. 11, print. rec., p. 91 (St. L. & Sub.).
Ord. 19,350, sec. 5, print. rec., p. 86 (St. L. & Sub.).
Ord. 15,594, sec. 4, print. rec., p. 76 (St. L. & Sub.).

The usual penalty for failure to observe any of these conditions and terms is that the same shall "cause the forfeiture of all the rights, privileges and franchises granted," etc.

The Court below construed these special or right-of-way ordinances as being in themselves an exercise of the taxing power (giving in clause 5, sec. 26, Art. III, of the City Charter), and that the conditions therein as above set forth were in fact a license tax, and being contracts, upon acceptance of the companies, could not be added to by another license tax, and hence held ordinance 21,087 to be void as against the complainants. (See opinions print. rec. 101.)

There was some oral testimony offered by complainant in an effort to show the license-tax was too onerous. We

think no force can be attached thereto, for reasons appearing in objections made when the questions were asked.

It appeared in the course of cross-examination that complainant (as well as its associate the St. Louis & Meramec River Co.) had been doing business many years, but had *never* paid any dividends, even while not paying the license-tax complained of; that complainant is capitalized at $7,500,000 of which only $4,000,000 was paid, and that it had issued bonds for borrowed funds in $7,500,000; (rec. p. 54-55; also 68), on which it was paying interest amounting to $375,000 a year (rec., p. 66); that about two per cent of the gross receipts were from sources other than fares (p. 65); that the complainant had always paid the $25 per car tax prior to the amendment by ordinance 21,087, but witness could not tell why the company paid the former but not the latter tax (print. rec., p. 61; also 67); that the company in 1904 (the World's Fair year at St. Louis) carried 21,228,786 adults and 1,667,573 children, or 22,-906,359 passengers; and in 1903 it carried 15,188,352 adults and 1,251,523 children or a total of 16,439,875 (print. rec., p. 65); that the company operates 110 street cars (p. 65); that the company had paid out $3,500,000 to $4,000,000 in the last two or three years and appropriated and applied its receipts and profits in extending its roads into the thinly settled county regions, and reconstructing its lines, so as to discount the future development of that region; that rich returns were expected in future years, by ultimately getting the traffic there (print. rec., pp. 66-67).

The testimony of the other witness Walsh was nothing but a series of personal opinions on legal points and is worthless from the tandpoint of legal testimony.

There were no other witnesses.

The defendant City being dissatisfied with the correctness of the ruling of the lower Court, for the reasons indicated in the assignment and specification of errors next herein set out, appeals to this Court for a reversal of the decree and asks for a dismissal of the bill.

ASSIGNMENT OF ERRORS.

The formal assignment of errors filed and presented by the appellant City of St. Louis (omitting caption, etc.), is as follows (print. rec., p. 98), to-wit:

Comes now the City of St. Louis, defendant in the above entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons:

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21,087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis impaired the obligations of any of the special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to con-

struct, operate and maintain street railways in said City, precluded the defendant. the City of St. Louis, from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis, by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction, maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21,087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license-tax by virtue of the special franchise ordinances granting it, or its assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant, The City of St. Louis, prays that the decree of the Circuit Court be reversed, and that said Court be directed to enter a decree in favor of said defendant.

SPECIFICATIONS OF ERROR.

As indicated in the above formal assignment of errors, appellants contend that the lower court erred in these respects:

(1) It misconstrued the special, or franchise, ordinances or rights-of-way (under which complainants and their predecessors in title, which form the constituent lines of complainants, derived their authority from the city) in construing the same as being in themselves an exercise of the city's right to impose a license tax on street cars under the Charter Article III, clause 5 of section 26, instead of merely terms and conditions for the grant, under the Charter Article X and the State Constitution Article XII, section 20.

(2) In holding the city had, in said special ordinances, contracted away, or attempted to contract away, its power to levy a license tax on street cars.

(3) In holding that if it had so attempted, that it could legally exempt complainants from license taxation in that manner.

(4) In holding that ordinance 21,087 was void because to recognize the city's right to enact it would enable the city to abuse such power, although there was no such abuse shown or decided to exist in the case before the court; in other words, in annulling the city's *power* to tax cars because it *might* abuse the same.

(5) After erroneously holding the conditions of said ordinances to be equivalent to providing for license taxes, in further erroneously holding that, regarded as license taxes, the city could not alter, amend or repeal the same.

(6) In holding that the city could not and did not exact the conditions and terms pleaded in the special or franchise ordinances without trenching upon or exhausting its taxing power.

(7) In holding that the city could contract away its taxing power at all.

(8) In holding that even if it could and did exempt the assignors of complainants, that such immunity passed to the latter.

POINTS AND AUTHORITIES.

I.

General Power to Enact a License Tax on Cars.

It must be conceded that under the Charter of the City of St. Louis (derived from the Constitution itself: Const. Missouri, Art. IX, Secs. 20-25), that City had the broad and specific power, in general, to enact ordinance 21,087 imposing a license tax on all street railway cars operated within its limits, as well as to enact the prior ordinance thereby replaced, which had fixed the amount at $25.00 per car, per annum. The power to tax as well as to license is conferred in express terms.

Charter of St. Louis, Art. III, Sec. 26, clause 5, conferring power to license, tax and regulate street railway cars.

Springfield vs. Smith, 138 Missouri 645, 654, *et seq.*

27 Am. & Eng. Enc. Law (2d Ed.), "Street Railways," p. 52.

See further on the general power of cities to impose license taxes in Missouri:

St. Louis vs. Weitzel, 130 Missouri 600, 619-620.

Aurora vs. McGannon, 138 Missouri 38, 45.

St. Louis vs. Green, 7 Missouri Appeals, 468, 474. 478, affirmed on this point in 70 Missouri 562.

See also, cases *infra* cited in Point II, Sub. (*c*).

Obviously the fact that a portion of the route of the company goes beyond the city limits can make no difference.

San Jose vs. S. J. Ry., 53 California, 475.
Newport News Ry. vs. Newport News, 100 Virginia, 157.

In fact, if there were no authority in the State (acting here through its delegated agent, the City) for the imposition of this tax, the foundation of this Court's jurisdiction would be gone, and the bill would have to be dismissed on that ground.

Savannah, etc., Ry. vs. Savannah, 198 U. S., loc. cit. 396.

It follows that since such license tax ordinance as a general proposition is valid, the appellees are required to pay the same upon their cars, unless they can show affirmatively some valid legal reason why they are excepted from its application. This they seek to do by the claim (1) that the right-of-way or special ordinances conferring upon them and their assignors or predecessors in title the city's consent, of themselves impose such license-tax, which cannot hence be increased or altered by ordinance 21,087 without their consent; or (2) that said right-of-way ordinances should be construed as exempting appellees from all license taxes.

These are ultimately the only two points involved in this case.

II.

An examination of the numerous franchise or right-of-way ordinances to the complainants and their constituent predecessors demonstrates that the conditions therein recited "in consideration" of which the grants were made, are conditions annexed under Article X of the City Charter, and

assumed by the street car companies in order to obtain the City's initial consent, necessary under the State Constitution, and cannot be construed as an exercise of the power conferred in the City Charter in Article III, Section 26, Clause 5, to tax street cars, nor as an exemption from such taxes.

(*a*)

There can be no question as to the right or propriety of the City to impose just such terms and conditions before giving its consent as it chose to impose in the said right-of-way ordinances, to-wit: payment of certain fixed stipulated sums, increasing as the franchise ages, paving and repair of space between the rails, rate of fare, time for completion of work, etc.; all of such provisions stand upon the same basis, but vary in particularity with each respective ordinance.

Whilst it is true in one sense that all Missouri corporations, including street railways, derive their franchises or right to exist originally from the State, acting through the General Assembly under general law, yet the rights-of-way conferred by the City upon street railroads are in effect equivalent to franchises, because unlike other corporations, under the Constitution, no street railroad can be granted the right "to construct and operate a street railroad within any city, town, village, or on any public highway without first acquiring the consent of the local authorities, nor can the franchise so granted be transferred without similar assent."

> Constitution of Missouri of 1875, Art. XII, Sec. 20. Note that in both the Constitution and Charter, an ordinance conferring the City's consent is termed a "franchise."

See also as to such power being equivalent to a franchise:

Blair vs. Chicago, 201 U. S. 400, loc. cit., 457-460; State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 190.

And the Charter of St. Louis also expressly provides that in granting the right-of-way or franchise to a street railway the City "as a consideration therefor, may impose a per capita tax on passengers transported *or an annual tax on gross receipts,*" etc.

Charter of St. Louis, Art. X, Sec. 1.

Now these provisions of Art. X of the Charter are the very terms exercised in the contract ordinances or rights-of-way ordinances (set out Print. Rec., 73 to 87, a synopsis of which is given in our statement *ante*, p. 21-23), which appellees rely on. And this Art. X of the Charter plainly refers to conditions to be annexed to the City's consent (as required by Art. XII, Sec. 20, of the Constitution, *supra*) to a street railway franchise, and these conditions when enacted in the franchise-ordinances and accepted by the companies are the price of such consent, *and are limited to that.*

But this Art. X of the Charter and such conditions annexed to obtaining a franchise thereunder and under the Constitution, is wholly independent of the power to impose a *license tax on street cars* given under clause 5, of sec. 26, of Art. III of the Charter, *supra.*

This distinction goes to the core of the case.

If observed, it follows that the consent conditions to a franchise can not operate as a license-tax on cars.

(*b*)

Under the Constitutional and Charter provisions above cited, the power given to the City is not limited to a mere "yes" or "no" in granting the right-of-way or franchise ordinances, but it may impose such conditions upon its consent as it sees fit.

St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, loc. cit. 252-253.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 457-460.
Allegheny City vs. Street Railway, 159 Pa. St. 411.
27 Am. & Eng. Enc. L. (2nd Ed.) "Street Railways," pp. 21-22.

See also:
Ashley vs. Ryan, 153 U. S. 436, loc. cit. 441-445.

(*c*)

It is therefore obvious that these "considerations" are but the bonus or price paid to the City for its consent to place the street railway companies upon the same plane to do business that other corporations have without any such consent. So far the ordinances are contractual and once accepted are binding as contracts.

But this has nothing to do with the further power of the City to impose a license-tax on street cars, as on any other conveyance using the streets, which power is not contractual, and exists by virtue of a totally different clause of the Charter. There may be a license, and a tax on the license.

One power is to contract, the other is to tax. The lower court ignored this distinction, or rather held that there was none such. While burdens agreed upon in such right-of-way ordinances are sometimes erroneously or inaccurately

called a "tax," in the sense of being a burden, they are in law not included under provisions relating to either general taxes or license taxes.

Metropol. Street Ry. vs. N. Y., 199 U. S. loc. cit. 44-45, 46.

Brooklyn City Ry. vs. N. Y., 199 U. S. 48, loc. cit. 50.

Mayor, etc., vs. Broadway Ry., 97 N. Y. 275, 283-284.

Newport, etc., Railway vs. Newport, 100 Virginia 157, loc. cit. 162.

City of Newport vs. Street Ry., 89 Ky. 29.

It has therefore been uniformly held that such contractual obligations as are in question in this case, assumed by street railway companies in obtaining municipal right-of-way ordinances or franchises "to operate, construct and maintain" street railways, under provisions practically like those here in issue, are never construed as exempting or relieving the street car companies from the imposition of license taxes by duly enacted ordinance of such municipality, even if not imposed until after the acceptance of the companies' franchise ordinances.

There is not a word in any of the ordinances relied upon by appellees that hints at a surrender by the City of its power to tax street-cars, or to exempt them from such tax, or grant an immunity therefrom.

In construing the ordinance of a City conferring upon a street railway company the authority to construct and operate a street railway, the right of the City to exact license ~~tax~~ fees will not be denied unless such right has been expressly

surrendered in the ordinance. Such grants are construed strictly against the corporation companies, and liberally in favor of the public; silence is negation, and doubt is fatal to the claim. There is no such surrender by a grant to operate, construct and maintain a street railway, though given upon compliance with certain conditions and payments. And when the contract ordinance between the City and the company does not in terms dispense with the payment of a license tax, the rights of a company are not impaired by a subsequent ordinance requiring such payment.

Springfield vs. Smith, 138 Missouri, 645, 655.
Wyandotte vs. Corrigan, 35 Kansas, 21.
New Orleans City Ry. vs. New Orleans, 143 U. S. 192.
Railway Co. vs. Philadelphia, 101 U. S., 528.
Met. Street Ry. Co. vs. New York, 199 U. S. 1, loc. cit. 37.
Savannah Ry. vs. Savannah, 198 U. S., 392, 398.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 471-473.
State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 194.
Newport, etc., Ry. vs. Newport, 100 Virginia, 157.
New Orleans vs. Orleans Ry. Co., 42 La. An. 4.
New Orleans vs. New Orleans Ry. Co., 40 La. An. 587.
San Jose vs. S. J. Railway, 53 Cal. 475, 481.
State vs. Herod, 29 Iowa, 123.

See also:

Rochester Ry. vs. Rochester, 205 U. S. 236, 248.
Cleveland Electric Ry. vs. Cleveland, 204 U. S. 116, 130.

If the companies wished or intended to have an exemption of any kind from taxation, or felt it was necessary for the profitable working of their business, they should have required a provision to that effect in their charters.

Memphis Gas Co. vs. Shelby, 109 U. S. 398, followed in New Orleans Ry. vs. New Orleans, 143 U. S. loc. cit., 195, Metropolitan Street Ry. vs. New York Tax Comrs., 199 U. S. loc. cit. 42, and other cases.

Newport, etc., Ry. vs. Newport, 100 Virginia loc. cit. 163.

See also cases, *supra*:

(*d*)

If there were doubt as to whether the special or franchise ordinances here in question should be construed to exempt or relieve the railway companies from payment of the general license tax, such doubt would be removed by the interpretations placed thereon by the companies themselves, which have always recognized the obligation to pay a license tax independently of the contract-ordinances, and which paid the general license-tax fee of $25.00 per car, and continued so to do until the amendment of that general ordinance by ordinance 21,087 in 1903. Obviously if the latter was an attempted impairment of the obligations of the City under the contract ordinances, so was the $25.00 tax ordinance. The amendment did not change the nature of the payment required, but merely the amount and method (which latter are matters not before the Court at this time). If the claim now made, that the special payments under the contract-ordinances worked immunity from a license-tax were correct, it was just as much so when the license-tax was fixed

at $25.00 per car, which, however, the companies all paid. If the present ordinance of 1903 is void, so was the amended one, yet the validity of the latter is admitted by the annual payments made thereunder by the predecessors or assignors of complainants, and indeed, by the latter themselves for years, since their organization.

It is a well-established rule (applicable in favor of a municipality as in any other case) that in case of ambiguity in the language, the contemporaneous interpretation placed upon a contract (though it be an ordinance-contract with a City) by the parties themselves, is entitled to great if not controlling influence, especially if continued over a long period of time.

St. Louis Gaslight Co. vs. St. Louis, 46 Missouri, 121, 127 *et seq.*
St. Louis vs. Laclede Gas Light Co., 155 Missouri, 1 l. c., 19.
Dist. of Col. vs. Gallagher, 124 U. S. 505.
Insurance Co. vs. Dutcher, 95 U. S. loc. cit. 273.
Topliff vs. Topliff, 122 U. S. 121, loc. cit. 131.

(*e*)

Nor is it to be overlooked as corroborative of the plain construction contended for by the City, that while on the one hand there is not an intimation upon which appellee can put its fingers, in any one of the numerous franchise ordinances, which expressly or impliedly *surrenders* the right of the City to tax street cars, yet there are distinct assertions which slipped into the ordinances which show the thought that the right to impose license-taxes is not involved in them, and require the payments on gross receipts (claimed by appellees to be of themselves, or to exempt them from,

license-taxes) to be in addition to "all other taxes and payments now required by law *or ordinance.*" Such reference to other *ordinance* can only mean a license-tax ordinance, and is significant of the light in which the fixed payments are regarded, to-wit, as in no way being of themselves license-taxes.

Ord. 19,350, sec. 7, print. rec., p. 86-87.

(*f*)

Again, the complainants have no standing here because *they have agreed to pay this very tax in issue in the contract-ordinances.*

The predecessors in title of the complainant, and the complainant on its own account, have in the consent-ordinances or franchise from the City, expressly agreed to "comply with the provisions of all general ordinances and charter provisions affecting street railways that may now be in force or which may hereafter be enacted." (See the ordinance so providing, enumerated and designated in appellants' Statement, *ante*, p. 23, with citation to the respective pages, to-wit, pp. 91, 86, 76, of the printed record where said provisions appear).

There *was* such a general license-tax ordinance then in force; and the present one is such a general ordinance, amending the former.

These provisions above quoted from the franchise ordinances of themselves amount to a contractual acceptance of the general ordinance in force when all of these contract-ordinances were enacted and accepted, imposing a license-tax of $25.00 per car, and also are an executory acceptance of the subsequent general one mill ordinance here in issue, amending said prior ordinance.

And this is true, even if in the absence of such agreement incorporating them by reference the said license-tax ordinances would be inapplicable to such companies because operating as an impairment of contract; and in fact even if they were wholly void (which of course is not the case, being here clearly within the City's general power).

Interstate Consolidated Street Ry. vs. Massachusetts, 207 U. S., 79.

III.

If the City had attempted to barter away its power to impose the license-tax in question, in the contract-ordinances conferring its consent, as claimed by appellees, such action would have been void as contrary to law, for either of several reasons.

As shown above in point II, we think that a construction of the right-of-way ordinances upon proper legal principles, will exclude the possibility of appellees being correct that they were intended to be relieved from payment of license-taxes on cars, and we think it will not be necessary to go further. But, for the sake of the argument only, we contend that if the railways were right in that contention, it would not avail them, for such attempted exemption would be void, whether (1) the City attempted expressly to exempt the railway companies, or (2) impliedly imposed a license-tax by providing for the percentage payments to be taken in lieu of such tax, which really amounts to the same thing.

(*a*) The City cannot bind its hands not to tax, or to exempt from taxes.

The sovereign State perhaps has the power to enact a

binding contractual exemption from taxation, were it not prohibited by its constitution, which, however, it is in Missouri: Const. 1875, Art. X, secs. 2, 6 and 7. The City of St. Louis is specially authorized by the Constitution to provide in its charter for levying taxes for municipal purposes, in such manner as is not inconsistent with the constitution and laws. (Const. Art. IX, sec. 21; St. Louis vs. Bircher, 76 Mo. 431; St. Louis vs. Sternberg, 69 Mo., 289, 298.)

But taxation (without which power the municipality ceases to exist) is an attribute of sovereignty that the legislature of this State has not, in fact, cannot, authorize a municipality to contract away, any more than the police power. The legislature cannot delegate a power denied to itself by the Constitution. A contract by a city, attempting it, is to that extent simply ultra vires and void.

Springfield vs. Smith, 138 Missouri, 645 (applying that rule to a street car tax exemption).
State vs. Railroad, 75 Missouri, 208.
Savannah, Thunderbolt, etc., Ry. Co. vs. Savannah, 198 U. S., 392.
People ex rel. Street Ry. vs. Tax Com'r., 174 N. Y. 417, loc. cit. 448, affirmed in 199 U. S. 1.

That a license fee for revenue *is a tax* is settled in Missouri:

St. Louis vs. Spiegel, 75 Missouri, 145.
St. Louis vs. Spiegel, 90 Missouri, 587, loc. cit. 591.

See also:

Springfield vs. Smith, ***supra.***

(*b*) If the argument were sound (which it is not) that the City had exercised and exhausted its license-taxing

power in imposing the conditions of fixed annual payments on gross receipts, which should be regarded as annual license taxes on cars, such an attempt by the City would be void for the additional reason that there would be no uniformity in such a tax, but a different, special and invidiously discriminating license-tax for each and every of the constituent lines of the complainant and through which it holds. The City would have no power arbitrarily to charge one company or individual one price by way of a license, and another in the same business another price. The tax must be uniform upon all within the same class. (Const. Missouri, Art. X, Sec. 3; print. rec., p. 10.) Such a tax must be by general law, substantially uniform in its operation throughout the City, and not by specific, unequal, special, single and dissociated provisions applicable to different individual cases. If so it would be void.

Kansas City vs. Corrigan, 18 Missouri Appeals, 206, 215.
St. Louis vs. Spiegel, 90 Missouri, 587.
St. Louis vs. Spiegel, 75 Missouri, 145.
Aurora vs. McGannon, 138 Missouri, 38, 48.
Railway Co. vs. Philadelphia, 101 U. S., l. c. 537.

See also below under point VI, subdivision (b).

We do not claim it is void, but only that such an absurd result would follow if complainants' contention were sound. No construction, involving such results, will be sustained.

But even if void, then, since these are the conditions under which the railways are authorized to do business at all, it follows they would have no authority to operate whatever, and hence have no standing in court. An essential condition being void, the whole ordinance would be void.

So held in St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, l. c. 253.

See also Allegheny City vs. Ry., 159 Pa. St. 411, loc. cit. 418-419.

IV.

The immunity from taxation burdens would not pass to complainants.

Moreover, such an exemption (if created) even when the main grant is of rights, privileges and franchises to the grantee and its successors and assigns will not pass with an assignment or transfer to the assignee or transferee.

Rochester Ry. vs. Rochester, 205 U. S. 236, collating the authorities.

Phoenix Ins. Co. vs. Tennessee, 161 U. S. 174, 180, *et seq.*

Keokuk Ry. vs. Missouri, 152 U. S. 301, 307, *et seq.*

Railroad vs. Georgia, 98 U. S. 359.

Turnpike Co. vs. Sanford, 164 U. S. 578, 586, *et seq.*

Railroad vs. Pendleton, 156 U. S. 667, 673.

V.

The right to alter, amend or repeal.

(*a*) Again, even if the argument were sound (which of course it is not), that the recited considerations for the right-of-way franchises were to be treated as if they were license-taxes, or operated to exempt from the City's charter power to tax street cars, then treating such provisions as license-tax burdens, the rights conferred would still in that respect be subject to the further provision in the ordinance conferring complainant's franchise that "The City of St.

Louis reserves the right to alter, amend or repeal this ordinance at any time," and also in the charter provision (in force at the times and since these franchise ordinances were enacted) that every such grant is taken "subject to the right to amend, alter or repeal any such grant in whole or in part."

> Ordinance 19,350, sec. 8 (print. rec., p. 87). Charter of St. Louis, Art. III, sec. 26, clause 11. (See Statement, *ante* p. 19.) That this clause applies to street railways is obvious, (and is so recognized in State ex. inf. vs. Lindell Ry., 151 Mo. loc. cit. 181, where it is cited in discussing the railway laws of St. Louis).

Conceding for the argument that the franchises of these companies amount to a contract of exemption, yet since at the time of the adoption thereof there existed the paramount power to repeal, alter or amend, the alleged exemption or relief from future license-taxes may be revoked without impairing the obligations of the contract, because the paramount reserve power, which is treated as if embodied in the contract, deprives the contract of its irrevocable character, at least with respect to such provisions as relief from license-taxation.

> Railway Co. vs. Philadelphia, 101 U. S. 528, loc. cit. 540.
>
> Fair Haven R. R. Co. vs. New Haven, 203 U. S. 379, loc. cit. 388-389.
>
> San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 308.
>
> Interstate Consol. Street Ry. vs. Massachusetts, 207 U. S. 79.
>
> State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.

Citizens' Bank vs. Owensboro, 173 U. S. 639, loc. cit. 644.

Street Railway Co. vs. Sioux City, 138 U. S. 93, loc. cit. 108.

Railroad vs. Georgia, 98 U. S. loc. cit. 365.

(*b*) A further important consideration is that at all times when any of the right-of-way ordinances were enacted which provide for the payments claimed to operate as immunity from the street car license-tax, the general ordinance existed, formed part of the charter of the railroads, and was in fact complied with, fixing a tax of $25.00 per annum on each car; and the City certainly had the right to amend such general ordinance by changing the amount, under its power to alter, amend or repeal any grant in whole or in part, even if it had not power to so do otherwise.

State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.

Fair Haven Ry. vs. New Haven, 203 U. S. 379, 388-389.

Stanislaus Co. vs. San Joachin Co., 192 U. S. 201, and cases there cited.

VI.

The Ordinance is Uniform.

(*a*) There is no merit in the contention that the ordinance denies complainants the equal protection of the law on the ground that it discriminates between street railroads and other public conveyances such as steam roads, automobiles, hacks, etc.

When a city having power to tax vehicles, trades, callings, etc., taxes alike all persons engaged in such business, such

taxation is equal and uniform. Street railroads may be put in a class by themselves.

Metropolitan Street Railway vs. New York, 199 U. S. 1, 47.
Savannah Ry. vs. Savannah, 198 U. S. 392.
Aurora vs. McGannon, 138 Missouri, 38, 48.
St. Louis vs. Bowler, 94 Missouri, 630, 634.
Newport Ry. vs. Newport, 100 Virginia, 157, 161.
Armour Packing Co. vs. Lacy, 200 U. S. 226, 235.

(*b*) Neither is there anything objectionable in the form of this ordinance fixing the amount of the tax according to a graduated scale, instead of a fixed sum.

This phase is considered below under point VIII, where high authorities sustaining such form are cited.

(*c*) But while there is nothing in the argument that Ord. 21,087, wholly general in its provisions, is not uniform, the mere fact that such an argument is made accentuates and emphasizes how absurd it would be to regard each and every of the individual special or contract ordinances conferring the municipal franchises on complainants' assignors as license-tax provisions. See on this point *ante* under point III, sub-division (b).

VII.

The ordinance is not oppressive, unreasonable, or confiscatory. Neither can it be attacked in this case on that ground.

(*a*) The ordinance is certainly reasonable and fair on its face. There is no evidence that is entitled to the slightest consideration, that it is oppressive, confiscatory or unreasonable.

The State, acting through its delegated agent, the City, has a right to impose a license-tax on street cars for the use of the streets, and burdening them with rails, etc., thereby requiring the street car companies (like others) to contribute to meet the burden of the City's government, in which they so largely share. A tax of one mill per day passenger is certainly not excessive in a metropolis of nearly three-quarters of a million people. If the car carries few passengers or remains largely unused, the tax is proportionally less; if jammed with passengers, then more—as it ought. As seen by the citations in point VIII, a tax graduated according to the earning power of the subject thereof, is to be recommended as an equitable adjustment.

(*b*) We fail to see any cogency in the main argument of the lower Court that if the City can impose a mill tax license, assumed to be two per cent of gross receipts (which, however, is erroneous because not allowing for receipts from other sources, such as running of ambulance and funeral cars, and U. S. mail cars, carrying expressage and freight, etc., as permitted to complainant: See, for instance, Ord. 19,350, sec. 6), that then "It can exact 50 per cent or more, and of course can utterly destroy the value of complainant's property." The Court avowedly supposes a case not before it and argues the denial of all power because of possibility of abuse. The argument logically annuls the right of the City to impose any license tax on street cars, or for that matter on any other conveyance, business or subject of such a tax, as the possibility of abuse exists in any such case. It is sufficient answer that abuse is not present in this case.

This Court has long ago demonstrated the fallacy of that argument.

The possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.

Powell vs. Pennsylvania, 127 U. S. 678, loc. cit. 686.

Verdin vs. St. Louis, 131 Missouri 26, loc. cit. 130, per Sherwood, J., citing Powell vs. Pennsylvania, *supra.*

Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 295-296.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, loc. cit. 563.

The argument is in effect that to permit the State (through the City) to tax this company by a license-tax for the privilege granted by its charter, is to destroy that privilege. But the answer is that the company took the charter subject to the same right of taxation in the State that applies to all other privileges and all other property. If the companies wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business, they should have required a provision to that effect in their charters. The Constitution of the United States does not profess in all cases to protect from unjust and oppressive taxation

Met. St. Ry. vs. N. Y. Tax Com., 199 U. S. 1, loc. cit. 40.

New Orleans Ry. vs. New Orleans, 143 U. S. 192, 195.

Memphis Gas Co. vs. Shelby Co., 109 U. S. 398, 400.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, 563.

Newport News Ry. Co. vs. Newport News, 100 Virginia loc. cit. 163.

There is no presumption against the integrity of the Municipal Assembly; but on the contrary, the presumption favorable to that body is constantly indulged that it is actuated by fair considerations and is free from motives of oppression or wrong.

St. Louis vs. Fischer, 167 Missouri, 654, loc. cit. 663.

St. Louis vs. Howard, 119 Missouri, 47, loc. cit. 50.

Mich. Cent. Ry. vs. Powers, 201 U. S. 245, loc. cit. 295.

(*c*) Neither should this Court, in this proceeding, even consider the question whether the tax be excessive if it has been bona fide enacted, and is not a mere disguise to destroy the privileges conferred in the franchises. Given the power to levy the tax or fix the amount of the license, the argument that it operates oppressively is a consideration which is properly addressed to the municipal assembly and not the Courts.

St. Louis vs. Weitzel, 130 Missouri, 600, loc. cit. 620.

St. Louis vs. Green, 7 Missouri Appeals, 468, 478-479 (affirmed on this point in 70 Mo. 568).

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.

Kehrer vs. Stewart, 197 U. S. 60, loc. cit. 69-70.

St. Paul vs. Colter, 12 Minn. 41, 49.

Kansas City vs. Trieb, 76 Missouri Appeals, 478.

Home Ins. Co. vs. N. Y., 134 U. S. 594.
21 Am. & Eng. Enc. L. (2nd Ed.), p. 790.

At all events there is no evidence that the tax is confiscatory or unreasonable.

San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 309-310.

VIII.

The form of the car tax is unobjectionable.

Ordinance 21,087 amended the former ordinance so as to substitute for a fixed annual tax of $25.00 per car, a sum equal to one mill per pay passenger carried. But the tax is still a license-tax *on each car;* it is not a demand for a portion of the fare collected; it is not a tax on the receipts. These may vary, be diminished or increased—the tax never. It is graduated by a fixed method according to the number of persons carried. In the new ordinance the amount is determined by a method uniform and equal in its application to each case. The graduated method is fairer, more equitable, less objectionable. At all events the method is purely one of legislative discretion.

The State and Federal Courts have often sustained this method of graduated tax and recommended it.

Clark vs. Titusville, 184 U. S. 329, loc. cit. 333-334.
Society for Savings vs. Coite, 6 Wall. (U. S.) 594, loc. cit. 608.
Maine vs. Grand Trunk Ry., 142 U. S. 217, l. c. 228-229.
Home Ins. Co. vs. N. Y., 134 U. S. 594, loc. cit. 600.
Aurora vs. McGannon, 138 Missouri, 38.

Amer. Express Co. vs. St. Joseph, 66 Missouri, 675, loc. cit. 680-681.

See also Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 301.

IX.

The dignity of the assailed ordinance as a legislative enactment.

It is also to be remembered that the construction of the lower Court, if sustained, and that asked by appellees, would work a practical annullment of the ordinance, as if it were void.

The Courts will not hold a legislative enactment void except in case of compelling necessity.

The State Constitution provides for the organization of the City of St. Louis by Charter; the Charter provisions are direct delegations of State power to the municipality, and the ordinances enacted by the Municipal Assembly in pursuance thereof, so long as they are in the legitimate sphere of municipal affairs, are entitled to the same force and effect and the same intendments and presumptions of validity as are accorded to enactments of the General Assembly. This is especially true of street railway legislation in St. Louis.

State ex rel. vs. Lindell Ry., 151 Missouri, 162, loc. cit. 182-183.

Grand Ave. Ry. vs. Lindell Ry., 148 Missouri, 637, loc. cit. 645.

See also:

St. Louis vs. West. Union Tel. Co., 149 U. S. loc. cit. 467-470.

St. Louis vs. Boffinger, 19 Missouri 13, loc. cit. 15.

ARGUMENT.

This case is so nearly like that of City of St. Louis vs. United Railways and St. Louis Transit Company, (No. 193, next preceding this case on the docket) that it would be a waste of the Court's time to present a separate argument of the points involved, especially since the complainant was absorbed by the United Railways Company since the appeal herein was taken.

We therefore refer to the written argument appended to our brief in that case, as equally applicable here, except that we will herein point out the few respects in which there is a difference between the two cases.

In this case—St. Louis and Spburban Companies—the ordinances to the respective companies affected, are of more recent date, and there are not so many of them.

The provision is found in the ordinance to the complainant itself that it "agrees to comply with the provisions of all general ordinances and charter provisions affecting street railways that may now be in force or hereafter enacted, and applicable to its entire line of railroad or any part thereof" (Ord. 19,393, sec. 11; see also ord. 19,350, sec. 5, and ord. 15,594 sec. 4; covering the entire system).

The ordinances also differ from most of those set out in the preceding case in that here the annual sums of money to be paid the City by the terms of the consent, ordinances or franchise (claimed by appellees to operate as license-taxes), were all *of fixed sums,* instead of percentages on gross receipts.

The ordinance to complainant also specifically provides that "The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time" (Ord. 19,350, sec. 8). In the other case the provision was not specifically incorporated in most of the ordinances, except as incorporated therein by the paramount provision of the City Charter, which, however, has the same effect in law.

In this case there was some testimony, brought out by complainant, while in the United Railways case there was none.

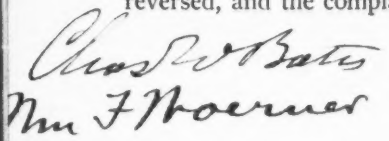
This evidence is referred to in our statement. It consists mostly of incompetent and immaterial opinions, on pure questions of law or pure conclusions of the witness, and we apprehend will be of no use to the Court.

In one respect, however, certain data was elicited that might possibly bear on the question of reasonableness of the tax levied, if that question were open here. It was shown that in 1903 there were carried by this system (which is about one-eighth in extent of that of the United Railways system) 16,439,875 pay passengers, in 110 cars in use. So that if the tax had been paid in 1903, of one mill on each passenger, the sum paid would have been $16,439 for 110 cars, or $149.45 per car.

The figures were also given for 1904, but that being an abnormal year by reason of the vast traffic resulting from the St. Louis World's Fair (to which the company ran) it is not an accurate index. Even then calculation shows the tax would only be a little over $200 per car, even if the company had not increased the number of its cars that year, which supposedly it did, or ought to have done.

In all other respects the cases are similar, at least so far as legal principles are concerned.

We therefore respectfully submit that the cause should be reversed, and the complainant's bill dismissed at its costs.



CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant, City of St. Louis.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 195.

THE CITY OF ST. LOUIS, APPELLANT,

vs.

THE ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 10, 1907.

(20,521.)

(20,521.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 195.

THE CITY OF ST. LOUIS, APPELLANT,

vs.

THE ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY.

PPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
aption	1	1
ill of complaint	1	1
Exhibit A—Ordinance No. 17008, December 31, 1892	33	20
B—Ordinance No. 17375, January 30, 1894	37	22
C—Ordinance No. 18677, August 29, 1896	43	26
D—Ordinance No. 18231, December 28, 1895	45	27
E—Ordinance No. 19350, April 5, 1898	53	32
F—Ordinance No. 19392, June 10, 1898	58	35
G—Ordinance No. 21087, March 25, 1903	65	39
Ordinance No. 19550, November 25, 1898	70	42
Ordinance No. 19954, February 23, 1900	71	43
ubpœna	73	44
Marshal's return	74	44
Appearance for defendant	74	45
Answer	75	45
Replication	84	52
Stipulation as to preliminary injunction	85	52
Motion for preliminary injunction	85	53
Preliminary injunction	86	54

-Judd & Detweiler (Inc.), Printers, Washington, D. C., August 3, 1907.

	Original.	Print.
Evidence for complainant	87	55
Testimony of E. P. Sommers	87	55
Stipulation as to facts	115	74
Testimony of J. S. Walsh, Jr.	115	75
Stipulation as to ordinances	119	77
Ordinance No. 18677, August 29, 1896	120	78
No. 17007, December 30, 1892	121	79
No. 17375, January 30, 1894	122	79
No. 18231, December 28, 1895	127	83
No. 18667, August 29, 1896	135	87
No. 17008, December 31, 1892	138	89
No. 19350, April 5, 1898	142	92
No. 19392, June 10, 1898	147	95
No. 21087, March 25, 1903	154	99
Examiner's certificate	159	102
Argument and submission	160	102
Decree	160	103
Order granting appeal	161	103
Assignment of errors	161	104
Petition for appeal	163	105
Bond on appeal	164	106
Opinion	166	106
Clerk's certificate	170	108
Citation	171	109
Acceptance of service of citation	172	109

1 In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4988.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Be it Remembered, That heretofore, to-wit: On the 25th day of April A. D., 1904, there was filed in the Clerk's office of said Court a certain bill in equity and seven exhibits and two ordinances, which said bill, exhibits, and ordinances are respectively in words and figures as follows, to-wit:

Petition.

To the Honorable Judges of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri:

The complainant, the St. Louis & Meramec River Railroad Company, files this its bill against the above named defendant, the City of St. Louis, and humbly complaining shows unto your Honors:

1. That the St. Louis & Meramec River Railroad Company is a corporation created by and existing under the laws of the State of Missouri, having its principal office and place of business in the City of St. Louis in the State of Missouri in the Eastern Division of the Eastern Judicial District of said State.

2. That the City of St. Louis is a Municipal Corporation of the State of Missouri, in the Eastern Division of the Eastern Judicial District of said State.

3. That the City of St. Louis is authorized by its charter, through its Municipal Assembly acting by ordinance, to determine all questions arising with reference to street railroads in the corporate limits of the city, which may involve the construction of such street railroads, granting the right-of-way or regulating and controlling them after their completion; and it has power also in like manner to sell the franchises or right-of-way for such street railroads to the highest bidder, or, as a consideration therefor, to impose a *per capita* tax on the passengers transported, or an annual tax on the gross receipts of such railroad on each car, and no street railway may be incorporated or built in the City of St. Louis, except according to the above stated conditions of the charter, and in such manner and to such extent as may be provided by ordinance.

2 4. That the St. Louis & Meramec River Railroad Company was incorporated for the purpose of constructing, maintaining and operating street railways within the City of St. Louis and in the County of St. Louis adjacent to said city, and that it is lawfully authorized and empowered to construct, maintain and

operate street railways in said City of St. Louis, and that by ordinance of said City of St. Louis No. 18667, approved August 29, 1896, and by other ordinances of said city hereinafter mentioned, it was authorized to construct, maintain and operate street railways on the streets in said city in said ordinances described, and to acquire the property, franchises and privileges of other street railway companies in the City of St. Louis and to operate the same, and, pursuant to such authority, it has by construction and purchase acquired a large system of street railways in the said City of St. Louis aggregating many miles; that among the lines of street railway in said city owned and operated by the St. Louis & Meramec River Railroad Company are lines which were authorized to be constructed under and by virtue of ordinances of said City of St. Louis, No. 17,008, approved December 31, 1892, No. 17,375, approved January 30, 1894, and No. 18,231, approved December 28, 1895; that all of said ordinances last named were originally granted to the Manchester Road Electric Railway Company and were duly accepted by said Manchester Road Electric Railway Company, that by the express provisions of said Ordinance No. 18,677 said Manchester Road Electric Railway Company was authorized to transfer to said St. Louis & Meramec River Railroad Company and said St. Louis & Meramec River Railroad Company was authorized to acquire upon such terms as said companies might mutually agree upon, all and singular the railroad of and also all the rights, privileges and franchises theretofore granted to and conferred upon said Manchester Road Electric Railway Company by said ordinances No. 17,008, No. 17,375 and No. 18,231, and it was provided that when said transfer should be made said St. Louis & Meramec River Railroad Company should be granted and was thereby granted and that it should possess, exercise and enjoy said rights, privileges and franchises as fully as if originally granted to it, and should maintain and operate the said railroad acquired by it from said Manchester Road Electric Railway Company in pursuance of said ordinances and in accordance therewith, and it was provided that said ordinance No. 18,677 should become void unless the transfer
3 therein provided to be made was made within one year from the date of the approval of said ordinance, and it was provided further that in the event such transfer was made to it said St. Louis & Meramec River Railroad Company should and would take said ordinances subject to and would carry out and perform all the obligations, requirements, conditions and restrictions therein imposed on said Manchester Road Electric Railway Company, and it was further provided in said ordinance that it should become null and void unless within sixty days after its approval said Manchester Road Electric Railway Company and said St. Louis & Meramec River Railroad Company should file with the City Register their respective written acceptances of the provisions of said ordinance and should also file with the City Register the written consent of the St. Louis & Suburban Railway Company to the provisions of said ordinance No. 18,677 and to the transfer to said St. Louis & Meramec River Railroad Company of the agreement provided for

in section 5 of said ordinance No. 18,231; that all of the conditions of said ordinance No. 18,677 were duly complied with by said St. Louis & Meramec River Railroad Company, said Manchester Road Electric Railway Company and said St. Louis & Suburban Railway Company, and that the said Manchester Road Electric Railway Company duly conveyed to said St. Louis & Meramec River Railroad Company by proper deeds of conveyance all of the railroad and property and all of the rights, privileges and franchises of said Manchester Road Electric Railway Company and said St. Louis & Meramec River Railroad Company thereupon became the owner of said railroad and property and of such rights, privileges and franchises and that it thereupon completed the construction of the several lines of railroad authorized by said ordinances and that it has ever since their completion owned and operated and still owns and operates the same.

4 5. That among the lines of street railway in said city owned and operated by said St. Louis & Meramec River Railroad Company are the lines constructed, maintained and operated under and by virtue of the authority of said ordinances No. 17,008 and No. 17,375; that by the terms of said ordinance No. 17,375, Sections 1, 2, 6 and 7 of said ordinance No. 17,008 were by mutual consent of the said Manchester Road Electric Railway Company and said City of St. Louis repealed and annulled and other sections bearing the same numbers enacted in lieu thereof; that by the terms of said ordinance No. 17,008, as amended by said ordinance No. 17,375, said Manchester Road Electric Railway Company was authorized to construct its lines and maintain and operate the same over the streets of the city therein mentioned for a term expiring January 1, 1925, upon certain express conditions as to the mode of construction and operating the same, and upon the condition and for the consideration that it should not charge for the transportation of passengers in excess of rates of fare in said ordinance No. 17,375 prescribed, to-wit: Not to exceed two and one-half cents for persons over five and under twelve years of age nor to exceed five cents for persons twelve years of age and over for a continuous passage one way, which said right to charge as aforesaid is indispensible to the operation of complainant, and that if in the future said Manchester Road Electric Railway Company, its successors or assigns should be able to make a contract and traffic agreement with any existing street railway by which passengers might be carried from the western limits of the city to the terminus of such connecting line for a single fare to be divided between the two railroads it should make such contract and agreement or forfeit all its rights, franchises and privileges under said ordinance and that whenever such contract should be made said Manchester Road Electric Railway Com-

5 pany, its successors or assigns, should operate owl cars between its eastern terminus and the city limits as was at that time provided by ordinance for roads having a downtown terminus east of Seventh street and between Poplar and Carr streets, and that if the said Manchester Road Electric Railway Company should ever sell its line to or become consolidated with another company or

acquire ownership or control of another line then the consolidated or purchasing company, its successors, or assigns, or lessees should be bound to carry passengers over its entire line in the city as far west as the city limits for a single fare of two and a half cents for children over five and under twelve years of age, and five cents for persons twelve years old and over, and upon the further condition and as a consideration for the grant of the rights, privileges and franchises given by said ordinance No. 17,008 and ordinance No. 17,375 said Manchester Road Electric Railway Company should pay to the City of St. Louis beginning five years after the acceptance of ordinance No. 17,375, annually on the first day of July for the first five years thereafter one thousand dollars per annum and for the next five years two thousand dollars per annum, and said Manchester Road Electric Railway Company, its successors and assigns further undertook, stipulated and agreed on the first day of July of each year beginning fifteen years after the acceptance of said ordinance, to file with the Comptroller of the City of St. Louis a full and complete statement of the gross earnings of said railway company or its said line for the preceding year, subscribed and sworn to by its president and secretary and that it should pay to the Treasurer of the City of St. Louis within ten days after the filing of each and every such statement during the remainder of the term of said ordinance, the sum of three per cent. on the amount of its gross earnings for each year, which amount should in no one year be less than
6 three thousand dollars, which said payments should be in addition to all other taxes or license fees now or hereafter prescribed by law, and that should said Manchester Road Electric Railway Company at any time purchase, lease or in any manner whatsoever acquire the control or management of any other railway or line, or should it in any manner become the property of or pass into the control or under the management of any other railway line, company or system, or should the property or franchises of said Manchester Road Electric Railway Company by reason of the adoption of a joint or general change for several lines or for any reason or in any manner be so managed or operated as to make a separate and distinct report of its gross earnings impracticable, then for such time the report or statement of gross earnings upon which said per cents were to be paid and which must be filed as stated, should be determined and made as follows: The amount of gross earnings so to be reported for said purpose of taxation should be in the same proportion to the gross earnings of the entire line of the railway company or system of which for the time being it, the said Manchester Road Electric Railway Company should form a part, as the mileage of said Manchester Road Electric Railway Company should be to the mileage of such whole line, railway company or system and that the Mayor, Comptroller, Register or Treasurer of the City of St. Louis should have the right at any time to examine the books and papers of the said company, its successors and assigns, or the books and papers of any other company or railway in conjunction with which it might be operated, for the purpose of ascertaining the gross earnings upon which the said per cents are

to be paid, and that a failure on the part of the said company, or its successors or assigns, or on the part of any other company, railway or system in conjunction with which it might be operated, to file a true and correct annual statement or report, as in said ordinance provided, or to pay the aforesaid tax on the gross receipts within thirty days after such statement should be filed, or after such tax should become due and payable, should work a forfeiture of the rights, privileges and franchises granted by said ordinance, and the amount of said tax should also constitute a legal demand against said company, and that any violation of any of the provisions of section 6 of said ordinance No. 17,008 as amended should work a forfeiture of all the rights, privileges and franchises granted under said ordinance, and upon the further condition and as a consideration for the grant of said rights and franchises that it, the said Manchester Road Electric Railway Company, its successors and assigns should, at its own cost and expense, grade all streets upon which its tracks are laid for the full width of said street and from building line to building line to the satisfaction of the Board of Public Improvements, and upon the further condition and as a consideration for the grant of the rights, privileges and franchises conferred by said ordinance No. 17,008 as amended by said ordinance No. 17,375, that it, the said Manchester Road Electric Railway Company, should, when any part of the Manchester Road upon which said railway was authorized to be constructed, should be repaired or reconstructed, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks and twelve inches outside thereof to be repaired or reconstructed with the same material or better with which the remainder of said street should be repaired or reconstructed, and upon the further condition and as a consideration for the grant of the rights, privileges and franchises conferred by said ordinance No. 17,008, as amended by said ordinance No. 17,375, that within one hundred and twenty days after said ordinance as amended should be approved said Manchester Road Electric Railway Company should file its written acceptance in the office of the City Register of all of the provisions of said ordinance and deposit with the City Treasurer the sum of two thousand dollars as security that it would within one year from the date of the approval of said ordinance in good faith begin the work therein provided to be done, and that it would complete the work within two years from the date said work should be commenced, and that unless said company should file its written acceptance of the provisions of said ordinance and deposit the said sum of two thousand dollars and commence the work as in said ordinance provided the rights and privileges therein granted should cease and become void and the money deposited should thereupon absolutely become the property of the City of St. Louis and no claim should thereafter be made or allowed to refund the same or any part thereof. And the said ordinance No. 17,008, and ordinance No. 17,375 amendatory thereof, were accepted by the said Manchester Road Electric Railway Company for itself, its successors and assigns, and constitute a contract between the said City and the said company,

its successors and assigns, which the said city has no right or authority to alter, impair or abrogate.

6. That among lines of street railway in said city owned and operated by the St. Louis & Meramec River Railroad Company are the lines constructed, maintained and operated under and by virtue of an ordinance of the said City of St. Louis, No. 18,231, approved December 28, 1895, to said Manchester Road Electric Railway Company, that by said last named ordinance said Manchester Road Electric Railway Company was authorized to extend its lines and to maintain and operate the same over the streets of the City of St. Louis therein mentioned for a term expiring January 1, 1925, upon certain expressed conditions as to the mode of constructing and
9&10 operating the same, and upon the condition and for the consideration that it should not charge for the transportation of passengers in excess of the rates of fare in said ordinance prescribed, to-wit: two and one-half cents for children over five and under twelve years of age, and five cents for persons over twelve years of age for a single continuous passage either way between any two points on said railroad within the city limits or between any point on said railroad east of the city limits, and any point on the connecting railroad over which the said Manchester Road Electric Railway Company, its lessees, successors or assigns, should transport its passengers to and from Sixth street; and that the rights and privileges granted by this ordinance should become null and void unless said railway company should, within sixty days after the signing of said ordinance by the mayor and before any work was done on the said extension by said ordinance authorized, file with the City Register an agreement duly and properly signed and executed by the St. Louis & Suburban Railway Company, which should secure the transportation of passengers between the western terminus of the said Manchester Road Electric Railway Company at the city limits to any point upon the line of said St. Louis & Suburban Railway Company, or vice versa, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over, either by continuous passage or by transfer; and that all the rights and privileges granted by said ordinance should become null and void if and when at any time thereafter said company, its lessees, successors or assigns, should fail to afford transportation to its passengers from the city limits on the line of said Manchester Road Electric Railway to any point on the line of the St. Louis & Suburban Railway Company, and
11 from any point on the line of the St. Louis & Suburban Railway Company to the western terminus of the said Manchester Road Electric Railway Company for a single fare either way, either by continuous passage or by convenient transfer, and that children's tickets should be sold by conductors on the cars two for five cents; and upon the further condition and as a consideration for the grant of the rights, privileges and franchises conferred by said ordinance, No. 18,231, that it, the said Manchester Road Electric Railway Company, its successors and assigns should, before

laying its tracks upon the unimproved portion of Sarah street, cause such portion of said Sarah street to be graded so as to conform to the established grade for its full width from building line to building line at the expense of said Manchester Road Electric Company in such manner as might be approved by the Board of Public Improvements; and upon the further condition and as a consideration for the grant of such rights, privileges and franchises that whenever tracks should be laid upon any unimproved portion of Sarah street said railway company should cause the space between its tracks and rails, and for two feet outside thereof, to be improved and kept improved with macadam, or such other material as the Street Commissioner should direct, and whenever such street should be improved or paved, constructed or re-constructed, the spaces between its rails and for one foot outside of its track should be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portion of said street; and upon the further condition and as a consideration for the rights, privileges and franchises granted by said ordinance, No. 18,231, that the said Manchester Road Electric Railway Company, its successors and assigns, should pay into the City Treasury, on the first day of January, 1897, the sum of one thousand dollars, and a like sum
12 on the first day of January, each year thereafter until and including the year 1905, and the sum of two thousand dollars on the first day of January, 1906, and a like sum on the first day of January each year thereafter until and including the year 1910, that such payments should be in addition to the annual payments provided for in section 6 of ordinance No. 17,375, approved January 30, 1894, and that all of the provisions of said section 6 of said ordinance No. 17,375 concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company, should apply to the entire line of said railway company including the extension authorized by said ordinance, No. 18,231, and that in consideration of the right to build and operate the extensions covered by said last named ordinance the total amount of the gross earnings of the company paid to the city should not be less than five thousand dollars per annum; and said ordinance further provided that any failure upon the part of said Manchester Road Electric Railway Company, its successors or assigns, to comply with the conditions and requirements of said ordinance should work a forfeiture of all rights granted by the same, and should constitute a breach of the bond required by said ordinance to be given to the said city; and the said ordinance, No. 18,231, was accepted by the said Manchester Road Electric Railway Company for itself, its successors and assigns, and constitutes a contract between the said city and the said company, its successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And on the eighth day of September, 1896, the St. Louis & Meramec River Railroad Company purchased and, by proper deed of conveyance, acquired all the rights, property and franchises of the said Manchester Road Electric Railway Company, including the right to

maintain and operate the lines of railway in the said City of
13 St. Louis authorized by said ordinances, Nos. 17,008, 17,375 and 18,231; that all of said lines of street railway have long since been constructed and have, since their completion, been maintained and operated continuously by the said St. Louis & Meramec River Railroad Company, and all the conditions of the aforementioned ordinances have been kept by the said companies, and all the payments required by the said ordinances to be made by them have been made as the same have respectively become due; that the lines of railway authorized by said ordinances Nos. 17,008, 17,375 and 18,231, were originally constructed upon the surface of Manchester avenue and upon Sarah street as the surface of said streets then existed, and that since said lines of railroad were so originally constructed the said St. Louis & Meramec River Railroad Company, under and by virtue of its contracts with said City of St. Louis as embodied in the said ordinances, has been required by the said City of St. Louis to change the grade of said streets from the surface as it existed at the time said lines of railroad were constructed to the grades established by said ordinance, and that said St. Louis & Meramec River Railroad Company had been required to expend, and has expended, enormous sums of money in the changing of said grades, and that by reason of the said change of grade it became necessary for it to entirely re-construct a large portion of said lines of railway on said Manchester avenue, and nearly the whole of said lines on Sarah street, and that it has been required to fulfill, and has fulfilled, its contractual obligations as contained in said ordinances with reference to paving, re-paving, construction and re-construction of said streets, and has expended enormous sums of money in such paving, re-paving and re-construction.

7. That among the lines of street railway in said city owned and operated by said St. Louis & Meramec River Railroad Com-
14 pany are lines constructed, maintained and operated under and by virtue of the authority of ordinance No. 19,350 of said City of St. Louis, approved April 5, 1898; that by the terms of said last mentioned ordinance said St. Louis & Meramec River Railroad Company was authorized, in conjunction with the St. Louis & Suburban Railway Company, to extend its lines and to maintain and operate the same over streets of the City of St. Louis therein mentioned for a term expiring February 6, 1936, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition and as a consideration for the grant of rights, privileges and franchises conferred upon it by said ordinance, No. 19,350; that it, the said St. Louis & Meramec River Railroad Company, its successors and assigns, in conjunction with the said St. Louis & Suburban Railway Company, would pay to the Treasurer of the City of St. Louis for account of said city the sum of three thousand five hundred dollars per annum on the 31st day of December of each year, such payments to be in addition to all other taxes and payments required by any law or ordinance at the date of said ordinance, No. 19,350; and the said ordinance, No.

19,350, was accepted by said St. Louis & Meramec River Railroad Company, and by said St. Louis & Surburban Railway Company, and constitutes a contract between the said city and the said companies, and each of them which the said city has no right or authority to alter, impair or abrogate; that the said lines of street railway so authorized by said ordinance, No. 19,350, were long since constructed and have been maintained and operated continuously since they were constructed by the said St. Louis & Meramec River Railroad Company and the said St. Louis & Suburban Railroad Company, and all the conditions of the said ordinance, No. 19,350, have been kept by the said companies, and all the payments
15 required by the said ordinance to be made by them have been made as the same respectively became due.

8. That among the lines of street railways in said city owned and operated by said St. Louis & Meramec River Railroad Company are the lines authorized by ordinance of the City of St. Louis, No. 19,392, approved June 10, 1898; that by the said ordinance No. 19,392 the said St. Louis & Meramec River Railroad Company was authorized to extend its lines and to maintain and operate the same over streets of the City of St. Louis therein mentioned for a term of years expiring January 1, 1925, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition and for the consideration that it should not charge for transportation of passengers in excess of the rates of fare in said ordinance prescribed, to-wit, two and one-half cents for children over five and under twelve years of age, and five cents for persons over twelve years of age, for a single continuous passage either way between any two points on the railroad of said St. Louis & Meramec River Railroad Company within the city limits, including all the lines of road then operated by said company within said city limits, or between any point on or to said railroad already operated or to be operated under said ordinance No. 19,392, east of the city limits, and on or to any point on the St. Louis & Suburban Railway Company's lines over which the said St. Louis & Meramec River Railroad Company, its lessees, successors or assigns then or thereafter might transport its passengers to and from Sixth street, making such transfers and using such transfer tickets as might be necessary; and upon the further condition and as a consideration for the grant of the rights and franchises conferred upon it by said ordinance, No. 19,392, that it, the said St. Louis & Meramec River Railroad Company, its successors and assigns, should, at its own cost
16 and expense, before laying its tracks authorized by said ordinance, cause the streets, wherever such tracks were to be laid, to be graded from curb to curb, to the approval of the Board of Public Improvements, and upon the further condition and as a consideration for the grant of said rights and franchises to it, that it, the said St. Louis & Meramec River Railroad Company, its successors and assigns, should, whenever its tracks should be laid upon any unimproved portion of the route authorized by said ordinance, cause the space between its tracks and rails, and for one foot outside

thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner should direct, and that whenever such street should be improved or paved, constructed or reconstructed, the space between its rails and for one foot outside of its tracks should be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portions of said street; and upon the further condition and as a consideration for the grant of said rights, privileges and franchises, that it, the said St. Louis & Meramec River Railroad Company, should pay into the City Treasury, beginning two years after the acceptance of said ordinance, No. 19,392, annually on the first day of July for the first five years thereafter one thousand dollars per annum, and for each year thereafter two thousand dollars per annum up to 1910, and from and after the year 1910 that the provisions of section 6 of said ordinance, No. 17,375, concerning the percentage of gross receipts to be paid to the city and the manner of ascertaining the gross receipts of said company, should apply to the entire line of said railroad including the extension authorized by said ordinance, No. 19,392; and it was further provided by said last named ordinance that all the provisions of the city ordi-
17 nances, Nos. 17,008, 17,375 and 18,231, so far as the same were in force and apply to the present line of said St. Louis and Meramec River Railroad Company, as the successor of the Manchester Road Electric Railway Company, should continue in force and apply to the entire line of railroad including the extension provided for in said ordinance, No. 19,392, except so far as the same might be modified by or be inconsistent with the provisions of said last named ordinance; and said ordinance further provided that any violation on the part of said St. Louis & Meramec River Railroad Company, its successors or assigns, to comply with the conditions and requirements of said last named ordinance should work a forfeiture of all the rights granted by the same, and should constitute a breach of the bond required by said ordinance to be given to the said City of St. Louis. And the said ordinance No. 19,392 was accepted by the said St. Louis & Meramec River Railroad Company, and constitutes a contract between the said city and the said company, which the said city has no right or authority to alter, impair or abrogate; that the said lines of street railway so authorized by said last named ordinance were long since constructed, and since their completion have been maintained and operated continuously by the said St. Louis & Meramec River Railroad Company, and all conditions of said ordinance No. 19,392 have been kept by the said company, and all the payments required by the said ordinance to be made by it have been made as the same respectively became due.

9. This complainant shows that by the provisions of the several ordinances in this bill of complaint hereinbefore mentioned and set forth, all of the ordinances being hereto attached and made part hereof, marked respectively exhibits "A," "B," "C," "D," "E" and "F," the said St. Louis & Meramec River Railroad
18 Company is restricted in its charges for transporting passengers over its lines of railway, and over the lines of rail-

way of the St. Louis & Suburban Railway Company, to five cents for each passenger above the age of twelve years, and to two and one-half cents for each passenger between the ages of five and twelve years.

10. And this complainant shows that by provisions of said ordinance No. 19,392, it is required to operate the street railways in the City of St. Louis owned and operated by it substantially as one system, and it is provided in and by said ordinances that transfers shall be given so as to transport passengers by continuous trip from any point on its system, or on the system of said St. Louis & Suburban Railway Company, to any other point on the system, and such transfers are so given by complainant free of any charge additional to the fare of five cents, or of two and one-half cents, originally paid by the passenger.

11. And this complainant shows to the Court that the several sums required by it to be paid under the provisions of the various ordinances hereinbefore set forth, the grading of the streets, the construction, re-construction, paving, re-paving, repairing and maintaining the spaces in the streets used by it, required by it to be done as hereinbefore set forth by the several ordinances aforesaid, the limitations imposed by said ordinances upon the rate of fare which may be charged by complainant for travel and transportation over its said lines of street railway and the requirement for the giving of transfers to passengers as set out above, were and are the considerations exacted, demanded and stipulated for by the said City of St. Louis from this complainant, and its predecessor in right and title, for the rights granted by the said city to construct, maintain and operate the said lines of street railway, and no other
19 right or privilege of any kind, and no other thing of value of any kind whatsoever was given or granted to the complainant, or its predecessor in right and title, by the said city in consideration of the aforesaid requirements made of it, and the said ordinances constitute contracts and agreements between the said complainant and the said City of St. Louis, giving right, license and authority to the said St. Louis & Meramec River Railroad Company to maintain the said lines of street railway and operate cars over the same for the transportation of passengers, which said contracts are irrevocable except by the agreement of the parties thereto for the terms thereof.

12. And the complainant shows that the City of St. Louis had authority, under its charter and laws and the Constitution of the State to provide by contract, through the form of ordinances enacted in that behalf, for the construction, maintenance and operation of street railways over the streets of the said city, and to prescribe the conditions thereof and the considerations therefor; and that, by the ordinances hereinbefore mentioned, the said City of St. Louis did contract with the several companies hereinbefore named, and their successors and assigns, the St. Louis & Meramec River Railroad Company, for the construction, maintenance and operation of said several lines of railway, and did by said ordinances pre-

scribe the consideration to be paid therefor, which consideration has in all cases been paid.

13. And complainant shows that the said City of St. Louis, the premises notwithstanding, by ordinance No. 21,087 (which is hereto attached and made part hereof marked exhibit "G"), approved March 25, 1903, assumed to enact and provide that all persons, copartnerships, associations and companies engaged in the business of transporting passengers from one point to another within
20 the said City of St. Louis for hire on street railways, should pay the License Collector of the said City of St. Louis an alleged license for each and every car used by them in transporting passengers, which so-called license was to be payable on the sixteenth day of April, July, October and January of each year for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December; the amount of such alleged license on each such car to be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding three months ending as aforesaid. And the said so-called license, so assumed to be authorized and imposed by the said ordinance, No. 21,087 imposes a charge upon the gross receipts from the carriage of passengers greatly exceeding two per cent. of the same. And no rights, privileges, franchises or considerations of any kind whatsoever are granted by said ordinance in consideration of the charge so assumed to be imposed, and no rights, privileges or properties of any kind whatsoever are granted by the said ordinance, or may be required or held under the same, other than those already possessed by the complainant under previous ordinances of and contracts with the said city. And it is provided in said ordinance, No. 21,087, that every company or association required thereby to pay a street car license shall provide for and equip each car used in the transportation of passengers with a suitable register or indicator capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered in continuous numerical succession the number of passengers who have paid for transportation on each car. And it is further provided that each of such corporations, companies or associations shall make report of the number of passengers carried by it on each car daily,
21 for the previous day, to the Register of the City of St. Louis, showing the number of pay or revenue passengers carried by it. And it is provided by said ordinance that every person, corporation, company or association refusing or neglecting to make the report so provided for shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five dollars nor more than five hundred dollars. And it is provided by said ordinance that any person, company, corporation or association which it is assumed is required to pay such street car charge or license, and which shall fail or neglect to pay the same within ten days after notice from the License Collector, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars,

and each day of such failure, neglect or refusal shall constitute a separate offense. And it is provided in said ordinance that a failure, refusal or neglect to pay such so-called license, for thirty days after the same is by the terms of said ordinance payable, shall operate as a revocation of any existing or subsequent unpaid license which such parties may have obtained to operate such street cars in said city. And it is provided in said ordinance that nothing herein contained shall be construed as excepting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance or agreement or contract, nor as replacing or affecting the same in any way, nor shall said ordinance be construed as impairing or affecting any license theretofore obtained.

14. And, notwithstanding the premises, the said City of St. Louis is demanding, under pretense of authority of the said last named ordinance, of the complainant herein that it shall pay to the said City of St. Louis, on all revenue or pay passengers carried
22 by it, the sum of one mill for each revenue or pay passenger so carried over the lines of said railway owned or operated by said St. Louis & Meramec River Railroad Company, in the said City of St. Louis.

14*a*. And this complaint shows that it is provided by the Constitution of the State of Missouri, which was adopted in the year A. D. 1875, in Article X, thereof among other things as follows, viz.:

"SECTION 1. Taxing Power, How Exercised.—The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

"SECTION 3. Taxing for Public Purposes Must be Uniform.—Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

"SECTION 4. Taxes in Proportion to Value.—All property subject to taxation shall be taxed in proportion to its value.

"SECTION 5. Railway Corporations, Taxed for What Purposes.—All railroad corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes, on the real and personal property, owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock.

"SECTION 10. General Assembly Shall Not Tax Municipalities, When.—The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other
23 municipal purposes but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

"SECTION 11. Rates For Local Purposes—Limits—How Increased

for Schools and Erection Public Buildings.—Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars, and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For city and town purposes the annual rate on property in cities and towns having thirty thousand inhabitants or more shall not, in the aggregate, exceed one hundred cents on the hundred dollars valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; and in towns having one thousand inhabitants or less, said rate shall not exceed twenty-five cents on the hundred dollars valuation. For school purposes in districts, the annual rate on property shall not exceed forty cents on the hundred dollars valuation: Provided, The aforesaid annual rates for
24 school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are tax payers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city, or school district, voting at such election, shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for state and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census taken under the authority of the State, or of the United States; said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

14*b*. And it was provided by general law of the State of Missouri, in pursuance of the constitutional provisions hereinbefore set forth, as shown in Article VIII, of Chapter 149, of the Revised Statutes of Missouri for the year 1899, that railroad companies were to be assessed by the State Board of Equalization of the State of Missouri

for all purposes of taxation, state, county and other municipal or local purposes, and that the taxes levied thereon should be levied in the manner by said law provided, to-wit, upon the cash value of all the property owned by such railroad company, return
25 whereof was to be made to said Board of Equalization. And it was provided by the laws of the State of Missouri enacted in 1897, and found in sections 9353, 9354 and 9355 of the Revised Statutes of 1899, as follows:

"SECTION 9353. Street Car Companies to Make Statement.—On or before the first day of January in each year, the president or other chief officer of every street railroad company in every city of this state whose line is now or shall hereafter become so far completed and in operation as to run horse cars, electric cars, cable cars or cars propelled by any other device for the transportation of passengers, shall furnish to the state auditor a statement, duly subscribed and sworn to by said president or other chief officer, before some officer authorized to administer oaths, setting out in detail the full length of the line, so far as completed, including branch or leased lines, the entire length in this State, the length of double or side tracks, the length of such line located upon real estate to which such company may have title as right of way, real estate, the length of such line located upon the public streets or thoroughfares of any city, together with all cars, motors, grip cars, live-stock, electric trolley wires, cables, cable conduits, power houses, stables and all other property, real, personal or mixed, owned, used or leased on the first day of June, which may be used in or incident to the operation of such street railroad, the length of such line in each county, municipal township and city through or in which it is located, and the cash value of the several items embraced in the statement.

"SECTION 9354. Taxes to Be Levied.—The said property returned to the State auditor, as by section 9353 required, shall be subject to taxation for state, county, municipal and other purposes to the same extent as the real and personal property of private persons, and the same shall be assessed, apportioned, certified and
26 the taxes thereon levied and collected at the time and in the manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property.

"SECTION 9355. Purpose of Certain Sections.—It being the purposes of the two preceding sections to make the property of street railroads in cities assessable and taxable in the same manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property, all acts and parts of acts inconsistent or in conflict therewith, are hereby repealed."

14c. And it was provided by the laws of the State of Missouri, approved March, 1901, as follows:

"SECTION 1. The franchises (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and all other similar corporations owning, operating and managing public utilities, and of all quasi public corporations possessing special and peculiar privileges and authorized by law to perform any public service

(except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation.

"SECTION 2. The State board of equalization in cases of
27 railroads, street railroads, bridges, telegraph, telephone companies and all other corporations whose property the state board of equalization is now or may hereafter be required to assess, and the county assessor, in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporation, tangible and intangible, in this State, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessor's books, under the head of 'all other property.'"

14*d*. And it is provided by the laws of the State of Missouri, Section 9357, Revised Statutes A. D., 1899, that of the taxes levied upon the railroad and street railroad properties of the State and collected therefrom, each county, municipal township, city or incorporated town of the State shall receive its due share of the taxes levied and collected for municipal purposes, to-wit, the taxes levied for municipal purposes upon the portion of the property located within the municipality, with the due proportion of franchise value added; and the City of St. Louis had no right or authority to levy any taxes, public charges or burdens upon the property or business of this complainant, other than as provided by the general laws of the State of Missouri, hereinbefore referred to, and the said City had no right to levy upon or demand or collect from this complainant any portion of its gross receipts, or to impose any *per capita* charge on the passengers transported by complainant, except as the same was done by the ordinances and contracts granting the rights to the complainant, or to its predecessors in right and title, to use the streets of the said City of St. Louis for street railroad purposes, and as a consideration for the grant of such rights.

28 15. And complainant shows that the said City of St. Louis pretends and claims that the said charge of one mill for each revenue or pay passenger assumed to be provided for and imposed by said ordinance Numbered 21,087 is required to be paid by complainant in addition to the several sums and taxes provided to be paid under the several ordinances granting to the St. Louis & Meramec River Railroad Co., and its predecessors in right and title, the right to construct, maintain and operate its lines of street railway in the said City of St. Louis.

16. And this complainant shows that the said ordinance No. 21,087, if by its terms it imposes such additional charge, is illegal, unconstitutional and void, because imposing a tax, charge or consideration for rights, privileges and franchises theretofore granted to and already possessed by the complainant.

And such ordinance is in violation of the provisions of the Constitution of the United States, section 10, of Article 1 thereof, which provides that no State shall pass any law impairing the obligations of contracts; and is in violation of Article 14 of the Amendments to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which said ordinance does.

17. The complainant shows that said ordinance if it imposes a charge of one mill or any other sum upon each revenue or pay passenger carried by the complainant over its lines of street railway in the said City of St. Louis, impairs the obligation of the contracts made by the several ordinances hereinbefore recited, and by imposing additional and heavy burdens and charges as a condition of using, enjoying or exercising the rights and franchises granted by said
29 special ordinance and by assumed legislative enactment, deprives this complainant of its property without due process of law and withholds from it the equal protection of the law.

18. And this complainant shows that the said so called license charge assumed to be imposed by the said ordinance No. 21,087, is not a license fee, but is an additional unequal charge and compensation assumed to be and is arbitrarily exacted from this complainant as a consideration for rights and franchises already granted to it by contracts with the City of St. Louis, and paid for by complainant in accordance with the provisions of said contracts.

19. And this complainant shows that said St. Louis & Meramec River Railroad Co., purchased the franchises and properties and constructed the lines of railway hereinbefore mentioned, upon the faith of the inviolability of the said contracts between the said company and its predecessors in right and title, and the said City of St. Louis, and the bonds and stocks in large amounts of the said St. Louis & Meramec River Railroad Co. were negotiated and are now held by many persons, who acquired the same on said faith, and the value of the properties, rights, franchises and privileges of said company, and the fixed right of complainant to retain and use all its revenues and all its bonds and stocks, will be greatly impaired and depreciated, if said ordinance No. 21,087 is enforced, according to its terms as asserted by the said City of St. Louis.

20. And this complainant shows that the said City of St. Louis intends and threatens to and will unless prevented by the interposition of this Honorable Court, deny to complainant the equal protection of the law and assert the said ordinance No. 21,087, against this complainant as imposing a present and existing charge upon it of one mill for every revenue passenger carried by it, and thereby

cast a cloud upon the title of the properties of this complainant, greatly impairing its credit.

30 And the said ordinance, if enforced, according to its terms, will deprive this complainant of revenue amounting to many thousands of dollars per annum, which are absolutely required for the purposes of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it, and to the proper discharge of the obligations imposed upon it by the several special ordinances hereinbefore set forth.

And the said city intends and threatens and will unless prevented by the interposition of this Honorable Court, institute numerous vexatious legal proceedings to compel plaintiff to comply with the provisions of said ordinance No. 21,087, in the form of suits to recover the penalties prescribed by said ordinance and by suits to forfeit other franchises, rights and privileges acquired and held under the provisions of the several special ordinances hereinbefore set forth, and as a result, complainant will be subjected to great loss, damage, hinderance and annoyance in the conduct of its business, which it is entitled to carry on without such proceeding, suit, annoyance, hinderance loss and damage, and will be greatly impaired in its ability to properly conduct the services assumed by it, and imposed upon it by the several special ordinances above mentioned.

Plaintiff further alleges that the right to charge for transportation on its lines of railways constitutes the source of its entire revenue; that complainant has outstanding bonds and other obligations which it must meet and pay, and which require the collection, retention and use therefor of all the revenues and income which complainant possesses, has or can acquire under the operation of its business as a transportation company; that a diminution of its revenues by subtracting therefrom the amount of taxes herein described and

31 threatened to be collected by the City of St. Louis under said ordinance will leave said revenues inadequate and insufficient to meet and pay complainant's operating expenses and other obligations already incurred; that the said ordinance, by means of which said additional tax therein mentioned is threatened to be collected, is unconstitutional and void, for the reasons that it discriminates against complainant company by providing for an unequal tax on the property of said company and a tax not uniform in its application to the property of the citizens of St. Louis and discriminates against plaintiff and its property; that said ordinance in its operation denies to complainant the equal protection of the law and arbitrarily, without any consideration therefor, confiscates the property of complainant to the extent of the taxes in said ordinance threatened to be enacted, contrary to the Constitution of the United States and the amendments thereof, herein indicated; that the right to make the charge for transportation herein mentioned and set forth, and to collect, use, and apply the same to complainant's obligations is the only consideration moving to complainant, enabling it to equip, operate and keep in repairs its lines of transportation and to conserve public safety.

21. All of which actings and doings and threatened actings and doings of the said City of St. Louis are contrary to equity and good conscience, and will entail irreparable damage upon complainant, and inasmuch as complainant is without remedy, except in a Court of Equity, and to the end that the complainant may have the relief to which it is entitled, and that the said defendant may answer the premises but not upon oath or affirmation, answer upon oath or affirmation being hereby expressly waived by complainant, may it please Your Honors to grant unto complainant a writ of subpœna to be directed to the City of St. Louis, commanding it at a
32 certain time and under a certain penalty to be therein named, to be and appear before this Honorable Court, then and there full, true, direct and perfect answer to make to all and singular the premises; and complainant prays that the said City of St. Louis may be perpetually restrained and enjoined from in any wise asserting or seeking to enforce said ordinance No. 21,087 against this complainant, and that said ordinance be declared to be null and void.

And complainant prays that a temporary restraining order issue out of and under the seal of this Honorable Court against the said City of St. Louis, its officers, agents and attorneys, enjoining them, and each of them, from in any wise, by suit or otherwise, asserting or enforcing said ordinance No. 21,087, against the complainant, until the further order by the Court in the premises; and that upon the final hearing hereof, the said injunction be made perpetual.

And complainant prays for such other and further relief as it may be entitled unto and as to the Court may seem meet and proper.

JEFFERSON CHANDLER,
Solicitor for Complainant.

STATE OF MISSOURI, *City of St. Louis, ss:*

E. H. Benoist, being first duly sworn on oath deposeth and says, that he is the vice-president of the complainant company, the St. Louis & Meramec River Railroad Company; that he has read the foregoing bill of complaint for the said company, and knows the contents thereof, and that the matters and things therein set forth, are true as he verily believes.

E. H. BENOIST.

Subscribed and sworn to before me this 19th day of January, 1904, by the said E. H. Benoist.

EDWIN W. MILLS,
Notary Public, City of St. Louis, Mo.

33 EXHIBIT "A."

[17,008.]

An ordinance authorizing the Manchester Road Electric Railway Company to construct, maintain and Operate a double track passenger railway, on, along and across certain streets and highways in the City of St. Louis, and to operate its lines of railroad by electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Authority is hereby given to the Manchester Road Electric Railway Company, its successors and assigns, to build, maintain and operate a double track passenger railway for public use, on and along the following route, to-wit: Beginning on the street known and hereinafter referred to as Manchester Road, at its intersection with the western line of Kingshighway; thence extending on and along said Manchester road and across all streets and alleys and roads intersecting therewith, to the western limits of the City of St. Louis. And the said railway company, its successors and assigns, may also construct, maintain and operate any and all curves, turn-outs, switches, sidings, cross-overs and connections, and may make any and all excavations which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis. The
34 tracks of said road shall be laid from Kingshighway to Barron avenue, in the center of the road, from Barron avenue to a point about three hundred feet west from Kraft street, on the south side of Manchester road, and from this point west to the city limits, in the center of the road.

SEC. 2. Said railway company, its successors and assigns, may operate its railroad along the route authorized herein, by electricity, either by storage batter, the conduit underground or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power may be erected and placed either between the tracks of said railroad or along the curbs of said streets and from Kingshighway to Barron avenue, and also from a point three hundred feet, more or less, west of Kraft street to the city limits; from Barron avenue to a point three hundred feet, more or less, west of Kraft street they shall be placed between the tracks, the wires to be not less than twenty feet above the surface of the street, and to be of such form and material and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said railway company, its successors and assigns, shall have the right to make any and all changes and improvements from

time to time in its machinery, apparatus and appliances which may be found necessary or advantageous to said company in its enterprise, provided the same shall meet the approval of said Board of Public Improvements. Said company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the streets over which it constructs its railroad, and at all points where said road crosses any of the streets of the City
35 of St. Louis, the said railway company shall, at its own cost and expense, grade all streets upon which its tracks are laid, for the full width of said streets from building line to building line, to the satisfaction of the Board of Public Improvements. From and after the completion of said railroad, said Manchester Road Electric Railway Company, its successors and assigns, shall run passenger cars over said railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its said railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of the machinery of said company, or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance. The fare from any point on its line to any other point on its line, as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons under twelve years of age, and not exceed five cents for persons twelve years of age and over, for a continuous passage one way. The rights, privileges and franchises hereby granted are granted subject to the following conditions and proviso, to-wit: Before said company shall be permitted to operate said road along the line above mentioned, or any part thereof, it shall enter into a binding contract with one or more other street railway companies whereby, for a single fare of five cents for adults, and two and one-half cents for children under twelve years of age, as hereinbefore provided, passengers may be conveyed from the western limits of said city, as hereinbefore mentioned, by proper transfers, to the eastern, northern and southern ends of such connecting companies' lines.

36 Sec. 4. Whenever any part of said Manchester Road, through which said railway shall run, shall be repaired or reconstructed, said company shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of said street is repaired or reconstructed.

Sec. 5. Within one hundred and twenty days after this ordinance shall be approved, said company shall file its written acceptance in the office of the City Register, of all the provisions of this ordinance, and deposit with the City Treasurer the sum of two thousand dollars as security that it will, within one year from the date of the approval of this ordinance, in good faith begin the work herein provided to be done, and that it will complete the work within two years from the

date said work shall be commenced. And unless the said company shall file its written acceptance of the provisions of this ordinance, deposit the above amount and commence work as herein provided, the rights and privileges herein granted by the provisions of this ordinance shall cease and become void, and the money deposited shall thereupon absolutely become the property of the City of St. Louis, and no claim shall hereafter be made or allowed to refund the same or any part thereof.

SEC. 6. In consideration of the rights and franchises granted by this ordinance, the said railway company shall pay to the City of St. Louis, annually, beginning from the time of the acceptance of this franchise, after the first five years of the franchise, one thousand dollars per year for five years; for balance of the franchise two thousand dollars per year.

SEC. 7. The said Manchester Road Electric Railway Com-
37 pany in accepting this ordinance agrees to comply with the provisions of all general ordinances now in force, or that may be passed in the future governing the construction, maintenance and operation of street railroads.

SEC. 8. This ordinance and all the rights, privileges and franchises hereby granted, shall cease and terminate January first, nineteen hundred and twenty-five.

Approved December 31, 1892.

EXHIBIT "B."

[17,375.]

An ordinance amendatory of ordinance number seventeen thousand and eight, entitled "An ordinance authorizing the Manchester Road Electric Railway Company to construct, maintain and operate a double track passenger railway on, along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power," approved December thirty-first, eighteen hundred ninety-two, by striking out sections one, two, six and seven, and inserting other sections in lieu thereof, and providing for the acceptance of said ordinance as amended.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Ordinance number seventeen thousand and eight, entitled "An ordinance authorizing the Manchester Road Electric Railroad to construct, maintain and operate a double track passenger railway on, along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power," approved December thirty-first, eighteen hundred and ninety-two, is hereby amended by striking out sections one, two, six and seven, and inserting in lieu thereof, the following:

38 SECTION 1. Authority is hereby given to the Manchester Road Electric Railway Company, its successors and assigns,

to build, maintain and operate a double-track passenger railway, for public use, on and along the following route, to-wit: Beginning on the street known and hereinafter referred to as Manchester Road, at a point west of its junction with the Old Manchester Road, and where the tracks of the Lindell Railway Company leave said Manchester Road; thence extending on and along said Manchester Road and across all streets and alleys and roads intersecting therewith, to the western limits of the City of St. Louis. And the said Manchester Road Electric Railway Company, its successors and assigns, may also construct, maintain and operate any and all curves, turn-outs, switches, sidings, crossovers and connections, and may make any and all excavations which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

The tracks of said road shall be laid from Kingshighway to Barron avenue, in the center of the street; from Barron avenue to a point about three hundred feet west from Kraft street, on the south side of Manchester Road, and from this point west to the city limits, in the center of the road, unless otherwise ordered by the Board of Public Improvements, which Board is hereby authorized to make such changes as to the designated portions of said streets to be occupied by said tracks as it may deem necessary.

SEC. 2. Said Manchester Road Electric Railway Company, its successors and assigns, may operate its railroad along the route authorized herein, by electricity, either by storage battery, the
39 conduit underground, by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power, may be erected and placed between the tracks of said railroad, or along the curbs of said streets, and from Kingshighway to Barron avenue, and also from a point three hundred feet, more or less, west of Kraft street, to the city limits. From Barron avenue to a point three hundred feet, more or less, west of Kraft street they shall be placed between the tracks, the wires to be not less than twenty feet above the surface of the street, the poles to be of iron and of such form and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said railway company, its successors and assigns, shall have the right to make any and all changes and improvements, from time to time, in its machinery, apparatus and appliances, which may be found necessary or advantageous to said company in its enterprise, provided the same shall meet the approval of said Board of Public Improvements. Said Manchester Road Electric Railway Company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the street over which it constructs its railroad, and the rails and ties of said road shall be so laid that they shall in no way obstruct, interfere with or impede the travel on the streets through which they are laid, and shall, at no point, be above the

level of the roadway, even though said roadway be either above or below the established grade, but said rails shall, at all times, be on a level with all streets which said road crosses and intersects, and the said Manchester Road Electric Railway Company shall, at its own cost and expense, grade all streets upon which its tracks are laid, for the full width of the streets, from building line to building
40 line, to the satisfaction of the Board of Public Improvements.

From and after the completion of said railroad, said Manchester Road Electric Railway Company, its successors and assigns, shall run passenger cars over said railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes.

Said Manchester Road Electric Railway Company may run its cars on its railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of the machinery of said company, or by any other extraordinary accident or emergency shall not be deemed a violation of this ordinance.

The fare from any point on its line to any other point on its line as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons over five and under twelve years of age, and not exceed five cents for persons twelve years of age and over, for a continuous passage one way; or if in the future said Manchester Road Electric Railway Company, its successors or assigns, shall be able to make a contract and traffic agreement with any existing street railway, by which passengers may be carried from the western limits of the city to the terminus of such connecting line for a single fare, to be divided between the two roads, it shall make such contract and agreement or forfeit all its rights, franchises and privileges under this ordinance; and whenever such contract is made said company, its successors or assigns, shall operate owl cars between its eastern terminus and the city limits, as
41 now provided by ordinance for roads having a down town terminus east of Seventh street and between Poplar and Carr streets.

And if the said Manchester Road Electric Railway Company shall ever sell or lease its line to or become consolidated with another company, or acquire ownership or control of another line, then the consolidated or purchasing company, its successors, assigns or lessee, shall be bound to carry passengers over its entire line in the city, as far west as the city limits, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over.

SEC. 6. In consideration of the rights and franchises granted by this ordinance, said railway company shall pay to the City of St. Louis, beginning five years after the acceptance of this franchise annually, on the first day of July, for the first five years thereafter, one thousand dollars per annum, and for the next five years, two thousand dollars per annum.

And said Manchester Road Electric Railway Company, its successors and assigns, further undertake, stipulate and agree, on the first day of July of each year, beginning fifteen years after the acceptance of this ordinance, to file with the Comptroller of the City of St. Louis a full and complete statement of the gross earnings of said railway company or its said line, for the preceding year, subscribed and sworn to by its President and Secretary; and shall pay to the Treasurer of the City of St. Louis, within ten days after the filing of each and every such statement during the remainder of the term of said ordinance, the sum of three per cent. on the amount of its gross earnings for each year, which amount shall in no one year be less than three thousand dollars. Which said payments shall be in addition to all other taxes or license fees now or hereafter prescribed by law.

42 Should said Manchester Road Electric Railway Company at any time purchase, lease or in any manner whatsoever acquire the control or management of any other railway or line, or should it in any manner become the property of, or pass into the control or under the management of any other railway line, company or system, or should the property or franchises of said Manchester Road Electric Railway Company be reason of the adoption of a joint or general charge for several lines, or for any reason, or in any manner, be so managed or operated as to make a separate and distinct report of its gross earnings impracticable, then for such time the report or statement of gross earnings upon which said per cents are to be paid, and which must be filed as stated, shall be determined and made as follows: The amount of gross earnings so to be reported for said purposes of taxation shall be in the same proportion to the gross earnings of the entire line, railway, company or system of which for the time being it forms a part, as the mileage of the Manchester Road Electric Railway Company bears to the mileage of such whole line, railway company or system. The Mayor, Comptroller, Register or Treasurer of the City of St. Louis shall have the right at any time to examine the books and papers of said company, its successors and assigns, or the books and papers of any other company or railway in conjunction with which it may be operated, for the purpose of ascertaining the gross earnings upon which the said per cents are to be paid.

The failure on the part of the said company, or its successors, or assigns, or on part of any other company, railway or system, in conjunction with which it may be operated, to file a true and correct annual statement or report as herein provided, or to pay the aforesaid tax on gross receipts, within thirty days after such statement should be filed, or after such tax becomes due and pay-

43 able, shall work a forfeiture of the rights, privileges and franchises granted by this ordinance, and the amount of said tax shall also constitute a legal demand against said company; and any violation of any provisions of this section shall work a forfeiture of all rights, privileges and franchises granted under this ordinance.

SEC. 7. The Manchester Road Electric Railway Company, in accepting this ordinance, agrees to comply with the provisions of

all general ordinances and charter provisions now in force and with all general ordinances and charter provisions affecting street railroads that may hereafter be enacted.

SEC. 2. Unless said Manchester Road Electric Railway Company shall file its written acceptance of the provisions of this ordinance with the City Register, within sixty days from date of the approval of this ordinance, the provisions of this ordinance shall be void and of no effect.

Approved January 30th, 1894.

EXHIBIT "C."

[18,677.]

An ordinance to authorize the Manchester Road Electric Railway Company to transfer its railroad tracks and all its rights, privileges and franchises obtained from the City of St. Louis to the St. Louis & Meramec River Railroad Company, and to authorize said last named company to acquire the same and to maintain and operate its double track passenger railroad over said tracks in pursuance of and in accordance with said rights, privileges and franchises so acquired.

44 Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Manchester Road Electric Railway Company is hereby authorized and empowered to transfer to the St. Louis and Meramec River Railroad Company, and said St. Louis and Meramec River Railroad Company is authorized to acquire upon such terms as such companies may mutually agree, all and singular the railroad of, and also all the rights, privileges and franchises which have heretofore been granted to or conferred upon said Manchester Road Electric Railway Company by the City of St. Louis by its ordinances numbers seventeen thousand eight, seventeen thousand three hundred seventy-five and eighteen thousand two hundred thirty-one, and when said transfer is made said St. Louis and Meramec River Railroad Company is hereby granted and shall possess, exercise and enjoy said rights, privileges and franchises as fully as if originally granted to it, and shall maintain and operate the said railroad acquired by it from said Manchester Road Electric Railway Company in pursuance thereof and in accordance therewith. Provided, however, that this ordinance shall become void unless the transfer hereinbefore authorized is made within one year from the date of the approval of this ordinance; and provided, further, that in the event such transfer is made to it, said St. Louis and Meramec River Railroad Company shall and will take said ordinances subject to and will carry out and perform all the obligations, requirements, conditions and restrictions therein imposed on said Manchester Road Electric Railway Company.

SEC. 2. This ordinance shall become null and void unless within

sixty days after its approval the said Manchester Road Electric Railway Company and St. Louis and Meramec River Railroad Company shall file with the City Register their respective written acceptance of the provisions of this ordinance, and shall also file with the City Register the written consent of the Suburban Railway Company to the provisions hereof, and to the transfer to said St. Louis and Meramec River Railroad Company of the agreement of said Suburban Railroad Company provided for in section five of ordinance number eighteen thousand two hundred and thirty-one.

Approved August 29th, 1896.

EXHIBIT "D."

[18,231.]

An ordinance authorizing the Manchester Road Electric Railway Company to extend its tracks and to construct, maintain and operate its double track railroad along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power, and to construct and maintain feed wire lines and prescribing conditions therefor.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Manchester Road Electric Railway Company, its lessees, successors and assigns, is hereby authorized to extend its tracks and construct, maintain and operate a double track railroad, together with all necessary turn-outs, switches, sidings and loops, over, along, across and upon the streets, alleys and public places on the following route, viz.: From the intersection of Manchester avenue (formerly called Manchester Road) and Sarah street; thence northwardly on, along and over said Sarah street, and across all intervening streets, alleys and public places to the intersection of Sarah street with the tracks of the St. Louis and Suburban Railway Company; there to connect with the tracks of the St. Louis and Suburban Railway Company, with the privileges of acquiring from said St. Louis and Suburban Railway Company the right to run its cars upon and over the tracks of said last named company and when so acquired the right is hereby given to operate cars on said tracks from said junction on Sarah street to the eastern terminus of the tracks of said St. Louis and Suburban Railway Company, by lease, traffic agreement or otherwise.

SEC. 2. Said railway company, its lessees, successors and assigns, may operate said extension along the route authorized herein in connection with its line of road to be operated under ordinance number seventeen thousand three hundred and seventy-five, by electricity, either storage battery, the conduits, underground, or by overhead wire system, through overhead and supplementary ground circuits, and for this purpose the poles, wires, conduits or other appliances necessary or

convenient in the use of electricity as a motive power may be erected and placed either between the tracks of said railroad or along the curbs of said streets, as may be directed by the Board of Public Improvements; said poles shall be of iron or steel, and the wires shall not be less than twenty feet above the surface of the street; said poles to be of such form and design and at such portions of the streets as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done. The location of the poles and tracks shall be submitted to the Board of Public Improvements for their approval, and shall be placed where designated by said Board of Public Improvements, and such poles and tracks shall, at any time thereafter, be removed, at the expense of said railway company, to such other portions of the streets occupied by them as the said Board may by order direct. And the said railway company shall have the right to make all reasonable and proper excavations in said streets, and all changes and improvements from time to time in its machinery, apparatus and appliances, subject, however, to the approval of the Board of Public Improvements.

Before laying its tracks upon the unimproved portion of Sarah street, the said railway company shall cause such portion of Sarah street to be graded, so as to conform to the established grade, for its full width, from building line to building line, at the expense of said company, in such manner as may be approved by the Board of Public Improvements.

And the said Company shall cause the grade of its roadbed and tracks to conform to the now, or hereafter established grade of Sarah street, and the rails and ties of said road shall be so laid that they shall in no way obstruct or interfere with or impede the travel on the streets through which they are laid, and shall at no point be above the level of the roadway, but said rails shall at all times be on a level with all streets which said railroad crosses or intersects.

From and after the completion of said extended line of railroad said Manchester Road Electric Railway Company, its lessees, successors and assigns, shall run passenger cars over said railroad every day of the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its said extended line of railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operation by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of machinery of said company or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance, and said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall operate owl cars between Sixth street and the city limits, as is now provided by ordinance for roads having a downtown terminus east of Seventh street, and between Poplar and Carr streets.

SEC. 3. In addition to the right of said company to erect and

maintain feed wires and poles along the line of its railroad, as provided by section two of this ordinance, and by ordinance number seventeen thousand and eight and number seventeen thousand, three hundred and seventy-five, said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall have the right and privilege of obtaining electric power for the operation of its railroad from its terminus at the city limits along the line of its route, including its extended line of railway herein authorized to be constructed and built, from the St. Louis and Suburban Railway Company by feed wires extending from the power house of said St. Louis and Suburban Railway Company to the line of said Manchester Road Electric Railway Company; and said Manchester Road Electric Railway Company is hereby authorized to erect and maintain poles for the carrying of said feed wires and to maintain and operate said feed wires over, along, across, and upon the streets, alleys and public places on the following route, viz.: Beginning at the power house of said St. Louis and Suburban Railway Company, situated near De Hodiamont Station, on or near the line dividing the City of St. Louis from the county of St. Louis; thence by the most feasible route as determined by the Board of Public Improvements, and over, along, across and upon all intervening streets, alleys and public places to the north end of the Skinker road; thence southwardly over, along, across and upon said Skinker road and over and across all intervening streets, alleys and public places to McCausland avenue; thence southwardly over, along, across and upon said McCausland avenue and over and across all intervening streets, alleys and public places to the line of said Manchester Road Electric Railway Company on Manchester avenue (formerly
49 called Manchester Road). Such wires to be not less than twenty feet above the surface of the streets, and such poles to be of iron or steel, of such form, and placed at such distances and at such portions of the street as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done. The location of such poles shall be submitted to the Board of Public Improvements for their approval, and shall be placed where designated by said Board of Public Improvements; provided, that said Manchester Road Electric Railway Company, its lessees, successors, or assigns, shall, whenever ordered so to do by the Board of Public Improvements, remove such feed wires and poles authorized by this section from above the streets and other public places, and shall place such feed wires underground in such streets, alleys and public places in such manner as may be directed by the Board of Public Improvements, and to the satisfaction of such Board.

Sec. 4. Whenever tracks shall be laid by said company upon any unimproved portion of Sarah street, said company shall cause the spaces between its tracks and rails, and for two feet outside thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever such street is improved or paved, constructed or reconstructed, the spaces

between its rails and for one foot outside of its tracks shall be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portion of said street.

SEC. 5. The rate of fare shall not exceed two and one-half cents for children over five and under twelve years of age, nor five cents for persons over twelve years of age, for a single continuous passage either way, between any two points on said railroad within
50 the city limits, or between any point on said railroad east of the city limits, and any point on the connecting railroad over which the said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall transport its passengers to and from Sixth street.

The rights and privileges granted by this ordinance shall become null and void unless said railway company shall, within sixty days after the signing of this ordinance by the Mayor, and before any work is begun on said extension, file with the City Register an agreement, duly and properly signed and executed by the St. Louis and Suburban Railway Company, which shall secure the transportation of passengers between the western terminus of the said Manchester Road Electric Railway Company at the city limits to any point upon the line of said St. Louis and Suburban Railway Company, or *vice versa*, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over, either by continuous passage or by transfer. All the rights and privileges granted by this ordinance shall become null and void if, and when, at any time hereafter said company, its lessees, successors or assigns, shall fail to afford transportation to its passengers from the city limits on the line of said Manchester Road Electric Railway to any point on the line of the St. Louis and Suburban Railway Company, and from any point on the line of the St. Louis and Suburban Railway to the western terminus of the said Manchester Road Electric Railway Company, for a single fare either way, either by continuous passage or by convenient transfer. Children's tickets shall be sold by conductors on the cars, two for five cents.

SEC. 6. Within thirty days after the signing of this bill by the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall execute its bond
51 to the City of St. Louis in the penal sum of twenty thousand dollars, with at least two securities, to be approved by the Mayor and Council, conditioned that it will save the city harmless on account of all damages that may be sustained by the city, or by any person or persons, firm or corporation, during the construction of said extension, or on account of the building of such road; and conditioned, further, that said company will faithfully comply with all the conditions of this ordinance. Said bond shall be renewed from time to time, whenever requested by the Municipal Assembly, if the security on said bond is found inadequate to the risk, or when requested to do so by the Mayor, and any failure to renew the same when so required shall work a forfeiture of this franchise.

SEC. 7. The work authorized by this ordinance shall be com-

pleted within six months after the signing of this ordinance by the Mayor, and said road shall be in operation within said six months from the city limits to the eastern terminus of the tracks of the St. Louis and Suburban Railway Company, as provided in section five of this ordinance. Failure to comply with this section will forfeit all rights and privileges hereby granted; and said company shall remove from the streets any obstructions which may have been placed therein, and restore said streets to the same condition they were in before the work of laying the tracks was begun. Any failure of the company to comply with the conditions of this section shall constitute a breach of the bond provided in section six hereof, and cause a forfeiture of the rights herein granted.

SEC. 8. All of the provisions of city ordinances numbers seventeen thousand and eight and seventeen thousand three hundred and seventy-five, so far as the same are in force and apply to the present line of the said Manchester Road Electric Railway Company,
52 shall continue in force and apply to the entire line of railway, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

SEC 9. The Manchester Road Electric Railway Company in accepting this ordinance agrees to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force, or which may hereafter be enacted and applicable to its entire line of railroad, or any part thereof.

SEC. 10. In consideration of the rights and privileges hereby granted the said railway company shall be required and agrees to pay into the City Treasury on the first day of January, eighteen hundred ninety-seven, the sum of one thousand dollars, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred five, and the sum of two thousand dollars on the first day of January, nineteen hundred six, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred ten; such payments to be in addition to the annual payments provided for in section six of ordinance number seventeen thousand three hundred and seventy-five, approved January thirty, eighteen hundred and ninety-four; and all of the provisions of said section six of said ordinance number seventeen thousand three hundred and seventy-five concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company shall apply to the entire line of said railway company, including this extension; provided, that, in consideration of the right to build and operate the extensions covered by this ordinance, the total amount of the
53 gross earnings of the company paid to the city shall not be less than five thousand dollars per annum.

SEC. 11. This ordinance, and all rights and privileges and franchises granted hereby, shall cease and terminate January first, nineteen hundred twenty-five.

SEC. 12. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this

ordinance shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

Approved December 28th, 1895.

EXHIBIT "E."

[19,350.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks from its present terminus on Locust street, near Sixth street, and construct a railroad over, along and across certain streets, in the City of St. Louis, and to operate its cars over and upon the tracks of certain other railroads, and to operate the same by electric power, and also authorizing the St. Louis and Meramec River Railroad Company to join with said St. Louis and Suburban Railway Company in said construction, and to maintain and operate its cars over the same tracks and route with electric power, and authorizing said companies to operate ambulance and funeral cars and carry household supplies, and prescribing conditions for the rights hereby granted.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company and the St. Louis and Meramec River Railroad Company, their
54 successors and assigns, are hereby authorized and empowered to extend the tracks of the St. Louis and Suburban Railway Company and construct, operate and maintain their respective lines of railway as follows: Beginning at a point in the south track of the St. Louis and Suburban Railway Company on Locust street, near the intersection of Sixth street, thence eastwardly with a single track curve on Locust street and Sixth street, connecting with the track of the Union Depot Railway Company on Sixth street; thence southwardly, over, along and upon said track of the Union Depot Railway Company on Sixth street to a point where the tracks of the Southern Electric Railroad Company connect with the tracks of said Union Depot Railway Company on Sixth street, near the north side of Pine street; thence south on and along said Sixth street, over and upon the track of the Southern Electric Railroad Company to a point near Elm street with the right to cross all intervening streets and railroad tracks; thence eastwardly with a single track curve connecting with the south track of the St. Louis Railroad Company on Elm street; thence east on Elm street over and upon the south track of said St. Louis Railroad Company to its terminus on Elm street near Broadway; thence east on Elm street with a single track over and across the tracks of the St. Louis Railroad Company on Broadway to the east line of Broadway; thence east on Elm street to the west line of Fourth street with a double track which may be used for such switching and standing of cars as may be incidental and necessary to the regular business of said com-

panies; thence with a single curve track to connect the south track on Elm street with the east track of the People's Railway Company on Fourth street; thence north over and upon said east track of the People's Railway Company to Locust street; thence west with a single curve track on Fourth and Locust streets and across
55 the west track of said People's Railway Company to a connection with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street; thence west over and upon said north track, and across the tracks of the St. Louis Railroad Company on Broadway to a point near Sixth street; thence west and across the tracks of the Cass Avenue and Fair Grounds Railway Company and of the Union Depot Railway Company on Sixth Street to a connection with the north track of said St. Louis and Suburban Railway Company on Locust street near Sixth street; provided, however, that said companies may build, with proper curve connections with their track provided for above on Elm street and with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street near Fourth street, a temporary single track on Fourth street between Elm and Locust streets, east of and as near as practicable to the east track of the People's Railway Company, the east rail of said temporary track to be distant at least ten feet from the east curb of the street; and maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Company have been so reconstructed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company upon the east track thereof as provided above in this section, between Elm and Locust streets; said companies shall be required, and they hereby agree, to remove such temporary track and restore the street to its former condition, to the satisfaction of the Street Commissioner, whenever the tracks of the People's Railway Company are reconstructed as above provided, and said companies are able to begin the operation of their cars on the east track thereof.

If said companies fail to remove such temporary track
56 when they are able to begin the operation of their cars upon the east track of the People's Railway Company, after the tracks of said last named company shall have been reconstructed as above provided, such failure shall work a forfeiture of all the rights and privileges granted by this ordinance and shall constitute a breach of the bond given under the provisions of this ordinance and the city shall remove such temporary track and restore the street at the cost of said companies, such cost to be recovered by the city against the bond given under the provisions of this ordinance.

SEC. 2. Said lines of railroad hereby authorized shall be operated by electric power, either by storage battery, conduits underground, the overhead wire system, through overhead and supplementary ground circuits, or any other electric system. Said companies may erect iron poles to carry overhead wires. The feed wires shall not be less than twenty feet above the surface of the street, said poles

to be placed along the curbs of streets at such distances apart as may be deemed necessary for the safe and proper operations of said railroads, and the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company may also construct, maintain and operate all curves, turnouts, switches, sidings, crossings, crossovers and connections, make all excavations which are reasonably necessary and convenient for the operation of their tracks along the route which they are by this ordinance authorized to use and occupy. The general plan, character and location of the poles shall be submitted to and approved by the Board of Public Improvements.

SEC. 3. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company,
57 their successors and assigns, may run their cars over said route as hereby authorized, at a rate of speed not to exceed ten miles per hour.

SEC. 4. Whenever any of the streets through which the tracks of said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, authorized by this ordinance to be reconstructed, are laid, shall be repaired or reconstructed, said companies shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed to the satisfaction of the Street Commissioner, and said companies shall cause the grade of the roadbed and tracks authorized by this ordinance to be constructed to conform to the grades now or hereafter established of the streets in which said tracks are laid, and at all points where said railroads cross any of the streets of the City of St. Louis.

SEC. 5. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, shall, within sixty days after the approval of this ordinance, file with the City Register their joint written acceptance of all the provisions hereof; and also their joint bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said companies, and each of them, jointly and severally, shall observe all the terms and conditions of this ordinance and all general ordinances of the City of St. Louis now in force, or that may hereafter be enacted in reference to street railways, and that they shall hold the City of St. Louis harmless from the payment of all or any damages and costs which may be established
against the City of St. Louis by reason or on account of the
58 construction, operation and maintenance of said railroads, or either of them, or by reason of the failure of said railway companies, or either of them, to comply with all the terms and conditions of this ordinance; which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond is demanded by the Mayor, and given by said railroad companies, and approved by the Mayor and Council, it shall supersede the

old bond, and thereupon the old bond shall be canceled and returned to the makers, and the new bond filed with the Register of the city.

SEC. 6. Said companies may run United States mail, ambulance and funeral cars, and cars for the transportation of family goods and supplies (excepting coal) over the tracks hereby authorized.

SEC. 7. In consideration of the rights and privileges granted by this ordinance, said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, their successors or assigns, each year, until the expiration of the rights and privileges granted by this ordinance, pay to the Treasurer of the City of St. Louis, for account of said city, the sum of three thousand five hundred dollars per annum, on the thirty-first of December of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

SEC. 8. The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

SEC. 9. This ordinance shall continue in force until February sixth, nineteen hundred thirty-six.

Approved April 5, 1898.

EXHIBIT "F."

[19,392.]

59 An ordinance authorizing the St. Louis and Meramec River Railroad Company to extend its tracks on Sarah street and to construct, maintain and operate its double track railroad along and across certain other streets and highways in the city of St. Louis, and to operate its line of railroad by electric power, and to construct and maintain feed wire lines; and prescribing conditions therefor; also to operate funeral and ambulance cars and to carry household supplies.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Meramec River Railroad Company is hereby authorized to extend its tracks and to construct, maintain and operate a double track railroad, together with all the necessary curves, turnouts, switches, sidings and loops, over, along, across and upon the streets, alleys and public places on the following route, viz.: From the intersection and connection of the double tracks of said railroad on Sarah street, in said city, with the tracks of the St. Louis and Suburban Railway Company on said Sarah street; thence northwardly with a double track on, along and over said Sarah street to Labadie avenue; thence with a single track over and along Sarah street to Ashland avenue; thence west with a single track over and along Ashland avenue to Fair avenue; also continuing the west track at and from the intersection of Sarah street and Labadie avenue westwardly with a single track over and along

Labadie avenue to a point opposite the center line of Fair avenue, extended southwardly to Labadie avenue; thence northwardly with a single track over private property into Fair avenue; thence northwardly over Fair avenue to Ashland avenue; thence westwardly with a double track in Ashland avenue one hundred and forty-six feet four inches, more or less, to a point opposite the center line of Fair avenue extended south from Natural Bridge Road, or such
60 distance as may be necessary to reach the center of Fair avenue, whenever and wherever opened south from Natural Bridge Road to Ashland avenue; thence northwardly over private land, or northwardly so soon as the same shall be open, on, over and along Fair avenue to Natural Bridge Road; thence, if necessary, by opening of Fair avenue, along and on Natural Bridge Road to Fair avenue; thence northwardly on, over and along said Fair avenue to Rosalie street; thence northwestwardly along and over said Rosalie street to Harris avenue; thence along and over Harris avenue to Florissant avenue. And said company, its successors and assigns, is also authorized to cross with its said tracks all intervening streets, alleys and public places, and also the track of any and all other street railroads upon said route.

SECTION 2. Said railroad company, its lessees, successors and assigns, may operate said extension along the route authorized herein, in connection with and as a part of its line of road operated, and to be operated under ordinances of the City of St. Louis, numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, by electricity, either by storage battery, conduits, underground or overhead wire system, through overhead and supplementary ground circuits, or any other electric system; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power, may be erected and placed either between the tracks of said railroad or along the curbs of said streets, as may be directed by the Board of Public Improvements; said poles to be of such form and design and in such portions of the streets as may be required by the Board of Public Improvements, under whose supervision all of said work is done. The location of the said poles and tracks shall be submitted to the Board of Public
61 Improvements for their approval, and shall be placed where designated by said Board of Public Improvements, and such poles and tracks shall at any time thereafter be removed at the expense of said railroad company, to such other portions of the streets occupied by them as the said board may by order direct. And the said railroad company shall have the right to make all reasonable and proper excavations in said streets and all changes and improvements from time to time in its machinery, apparatus and appliances, subject, however, to the approval of the Board of Public Improvements. And the said company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grade of said streets, and the rails and ties of said road shall be so laid that they shall in no way obstruct or interfere with or impede the travel on the streets through which they are laid, and shall at no

point be above the level of the roadway; but said rails shall at all times be on a level with all streets which said railroad crosses or intersects. Before laying said tracks the said company shall cause the streets wherever such tracks are laid to be graded from curb to curb, and to the approval of the Board of Public Improvements. From and after the completion of said extended line of railroad or railway said St. Louis and Meramec River Railroad Company, its lessees, successors and assigns, shall run passenger cars over said railroad every day of the year during the life of this franchise between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its extended line of railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangements of machinery of said company, or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance.

62 SECTION 3. In addition to the rights of said company to erect and maintain feed wires and poles along the line of its railroad, as provided by section two of this ordinance and by ordinances numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, said railroad company, its lessees, successors or assigns, shall have the right and privilege of obtaining electric power for the operation of its said extension from the St. Louis and Suburban Railway Company, by feed wires extending from the power house of said St. Louis and Suburban Railway Company to the said extension, carried on poles, along, over and across such streets and alleys of the said City of St. Louis as may be hereafter selected by said company and approved by the Board of Public Improvements and the location of said poles along such route shall also be approved by the said Board of Public Improvements before said company shall have the right to erect said poles.

SECTION 4. Whenever tracks shall be laid by said company upon any unimproved portion of the said route, said company shall cause the space between its tracks and rails, and for one foot outside thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever such street is improved or paved, constructed or reconstructed, the space between its rails and for one foot outside of its tracks shall be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portions of said street.

SECTION 5. The rate of fare shall not exceed two and one-half cents for children over five and under twelve years of age, nor over five cents for persons over twelve years of age, for single con-

63 tinuous passage either way, between any two points on said railroad, within the city limits, including said extension and line of road now operated by said company within said city limits; or between any point on or to said railroad already operated or to be operated under this ordinance, east of the city limits, and on or

to any point on the St. Louis and Suburban Railway Company's, over which the said St. Louis and Meramec River Railroad Company, its lessees, successors or assigns, now or hereafter may transport its passengers to and from Sixth street; making such transfers and using such transfer tickets as may be necessary.

At the time of filing this acceptance of this ordinance as provided herein, the said St. Louis and Meramec River Railroad Company shall file with the City Register the written acceptance of the St. Louis and Suburban Railway Company of all the provisions of this section.

SECTION 6. Within sixty days after the approval of this bill by the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall agree therein to comply with the provisions of all general ordinances and charter provisions of said city affecting street railroads, that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad, or any part thereof, and shall execute its bond to the City of St. Louis, in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that it will save the city harmless on account of all damages that may be sustained by the city, or by any person, or persons, firm or corporation, during the construction of said extension, or on account of the building of said extension of said road;

and condition further, that said company will faithfully com-
64 ply with all the conditions of this ordinance, and with all the general ordinances and charter provisions of said city affecting street railroads, that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad, or any part thereof. Said bond shall be renewed from time to time whenever requested by the Municipal Assembly, if the security on said bond is found inadequate to the risks, or when requested to do so by the Mayor.

SECTION 7. The work authorized by this ordinance shall be begun within six months from the approval of the ordinance, and shall be completed within two years after the opening of Fair avenue from Ashland avenue to Natural Bridge Road.

SECTION 8. Said St. Louis and Meramec River Railroad Company, its successors and assigns, shall not allow freight cars to be run on any portion of its line within the City of St. Louis, excepting for the transportation of family goods and supplies (excluding coal), and for the use of persons living on or near the line of said railroad. Said company may run cars to carry such family goods and supplies, also United States mail, ambulance and funeral cars over its lines and this extension.

SECTION 9. All the provisions of the city ordinances numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, so far as the same are in force and apply to the present line of said St. Louis and Meramec River Railroad Company as the successor or lessee of the Manchester Road Electric Railroad Company, shall continue in force and apply to the entire line of railroad, including

the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

65 SECTION 10. In consideration of the rights and privileges hereby granted, the said railroad company shall be required, and agrees, to pay into the city treasury, beginning two years after the acceptance of this ordinance, annually, on the first day of July, for the first five years thereafter, one thousand dollars per annum, and for each year thereafter, two thousand dollars per annum up to nineteen hundred and ten; and from and after the year nineteen hundred and ten the provisions of section six of ordinance seventeen thousand three hundred and seventy-five concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company, shall apply to the entire line of said railroad, including this extension.

SECTION 11. This ordinance, and all the rights, privileges and franchises granted hereby, shall cease and terminate January first, nineteen hundred and twenty-five.

SECTION 12. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this ordinance shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

SECTION 13. The St. Louis and Meramec River Railroad Company, in accepting this ordinance agrees to comply with the provisions of all general ordinances and Charter provisions affecting street railroads that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad or any part thereof.

Approved June 10, 1898.

EXHIBIT "G."

66 [21,087.]

An ordinance to amend sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. *St.* Louis" by striking out said sections and inserting new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies em-
67 braced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be desig-
68 nated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in section twenty-one hundred
69 and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the

terms of any special ordinance, or agreement or contract, nor
70 as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

[19,550.]

An Ordinance to Partially Improve Neosho Street Between Broadway and Michigan Avenue.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause Neosho street, between Broadway and Michigan avenue, to be partially improved by grading, preparing ground for the superstructure, laying on the roadway a sub-foundation of rough rock, twenty feet wide, and placing thereon a course of macadam, with a binding material and a top dressing of gravel, and making all proper connections and intersections with other streets and alleys.

SEC. 2. The sub-foundation of rough rock and the macadamizing shall be of limestone, the binding material shall be of loam, sand or macadam screenings, and a top dressing of gravel shall be used to cover the surface of the roadway.

SEC. 3. The grading shall be done in accordance with the directions of the Street Commissioner. The ground for the superstructure shall be prepared and the roadbed properly formed to a depth of fifteen inches below the intended surface of the roadway. On this roadbed there shall be placed a sub-foundation of rough rock, six inches deep and a layer of broken stone of macadam nine inches deep, which shall be well compacted by rolling, after which the void spaces shall be filled with loam, sand or macadam screenings by
71 flushing with water. On the surface thus formed there shall be spread a covering of gravel. The whole shall then be well rolled.

SEC. 4. The cost of preparing ground for the superstructure, sub-foundation of rough rock, macadamizing, binding material, top dressing, rolling and all proper connections and intersections required, shall be charged as a lien upon the adjoining property fronting or bordering on the improvement herein provided for, and shall be paid by the owners thereof. When said work is completed, the President of the Board of Public Improvements shall compute the cost thereof, and levy and assess the same, as a special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf of the contractor, bills of such cost and assessment, accordingly, as required by law.

SEC. 5. The cost of the grading shall be paid by the City of St. Louis, and the sum of three hundred dollars is hereby appropriated on account thereof, payable out of the fund set apart for street improvements.

Approved November 25, 1898.

[19,954.]

An Ordinance to Reconstruct Alley in City Block Number Eight Hundred and Ninety-four.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause alley in city block number eight
72 hundred and ninety-four from Eighteenth street to Nineteenth street, and between Market street and Chestnut street, to be reconstructed by taking up and removing the old pavement, preparing ground for the superstructure, laying a roadway pavement of vitrified paving block on a concrete base and making all proper connections and intersections with other streets and alleys.

SECTION 2. The base shall be a bed of hydraulic cement concrete and the paving shall be the best quality of vitrified paving block, laid on a bed of sand.

SECTION 3. The old pavement shall be removed and the ground for the superstructure prepared to a depth of twelve and one-half inches below the intended surface of the roadway. On the roadbed a base of hydraulic cement concrete, six inches deep, shall be laid; on this base there shall be placed a pavement of the best quality of vitrified paving block. The blocks shall not be less than nine inches nor more than twelve inches long; not less than three and one-half inches nor more than four and one-half inches wide; not less than five inches nor more than six inches deep; they shall be set on edge on a bed of clean, coarse sand of sufficient depth to bring the upper surface of the blocks, after they have been well rammed, to the true surface of the pavement. The joints shall be completely filled with grout, composed of one part best Portland Cement to one part of sand.

SECTION 4. The cost of the foregoing work and all proper connections and intersections required shall be charged as a lien upon the adjoining property fronting or bordering on the improvements herein provided for and shall be paid by the owners thereof. When said work is completed the President of the Board of Public Improvements shall compute the cost thereof and levy and assess the same as special tax against each lot of ground chargeable
73 therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf of the con-

tractor, bills of such cost and assessment accordingly, as required by law.

Approved February 23, 1900.

And thereupon a subpœna in Chancery was issued in said cause, which subpœna, with the marshal's return thereon, is in words and figures as follows, to-wit:

Subpœna.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, set:

In the Circuit Court of the United States in and for the Eastern Division of Said District.

The President of the United States of America to City of St. Louis, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, on the first Monday of June next, at the City of St. Louis, then and there to answer the bill of complaint of St. Louis & Meramec River Railroad Company, a citizen of the State of Missouri, filed against you on the 25th day of April, 1904; hereof fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice
74 of the Supreme Court of the United States, the 25th day of April, 1904.

Issued at office, in the City of St. Louis, under the seal of said Circuit Court, the day and year last aforesaid.

JAMES R. GRAY, *Clerk.*

MEM.—The Defendant to enter its appearance in this suit in the Clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

JAMES R. GRAY, *Clerk.*

I certify that I executed this writ at the City of St. Louis in the above named district, on the 26th day of April, 1904, by delivering a true copy thereof as furnished by the Clerk to Rolla Wells, Mayor of the within named defendant Corporation, the City of St. Louis.

Marshal's Fees.

One service at $2.00	$2.00
Mileage, 1 mile at 6 cents	.06
Total	$2.06

WILLIAM L. MORSEY,
U. S. Marshal, Eastern District of Missouri.

Appearance.

And afterwards on the 2nd day of May, 1904, the defendant entered its appearance, which is in words and figures as follows, to wit:

No. 4988. Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD CO.
vs.
CITY OF ST. LOUIS.

The undersigned hereby enter appearance for defendant in the above entitled cause.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant.

75 And afterwards, on the 1st day of June, 1904, an answer was filed in said cause, which is in words and figures, as follows, to-wit:

(*Answer.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4988.

THE ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY,
Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

Answer.

Now comes the defendant in the above entitled cause and for its answer to the complainant's bill in equity, and showing cause why no injunction or other relief prayed for should be granted, states:

(1.) This defendant denies each and every allegation in said complainant's bill contained, except as hereinafter specifically admitted.

(2.) Defendant admits for the purpose of this cause that the complainant is a corporation created by and existing under the laws of the State of Missouri, having its principal offices and place of business in the locality alleged in the complaint, and states that said complainant is engaged in the business of transporting passengers from one point to another within the City of St. Louis, for hire, on street railways.

(3.) Defendant further admits that it is a municipal corporation of the State of Missouri, situated in the Eastern Division of the Eastern District of said State, and states that it, the said city, is duly organized and possessed of its Charter, under and in pursuance of

the provisions of the Constitution of said State as set forth therein in Article IX, sections 20 to 25 inclusive and amendments thereto.

(4.) Defendant further states that at all times mentioned in the complaint said Constitution (in Article XII, section 20) provided that:

"No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway; without first acquiring the
76 consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

(5.) Defendant admits that under Article X, section 1 of the Charter, it is and at all the times stated in complainant's bill was, empowered, through its Municipal Assembly, by ordinance, to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right-of-way, or regulating and controlling them after their completion; and also had power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a *per capita tax* on the *passengers* transported, or an *annual tax* on the *gross receipts* of such railroad, or on *each car*, and that no street railroad should be incorporated or built in the City of St. Louis except according to the above and other conditions in such Charter, and in such manner and to such extent as provided by ordinance.

And defendant states that it is and was by section two of said Article X of its Charter empowered to regulate the time and manner of running cars, and the rates of fare on street railroads then or thereafter to be built, and the sale of tickets and exchange thereof between the several companies, and to tax the property of street railway companies in such manner as might be provided by law.

And that under section three of said Article X of said Charter it is provided that any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indisposition and surrender thereby all chartered franchises as provided by ordinance.

77 And that by section five of said Article X of said Charter all street railroad companies are and were required to keep the street between the rails and to the extent of 12 inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails to be of the same material as the street itself.

That complainant took all and every franchise, right or privilege granted or conferred by any ordinance subject to all the foregoing powers, and that the provisions in ordinances referred to in complainant's bill requiring the same and similar obligations to repair are of no more effect than if they had been omitted, being the law at all events, and cannot operate as a consideration to the city.

(6.) Defendant further states that acting through its Mayor and Assembly by ordinance, it had (under its Charter, Article III, section 26, clause eleventh) sole power and authority to grant to persons or corporations the right to construct railways in the city, but at all times subject to the right to amend, alter or repeal any such grant in whole or in part, and to regulate or control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles. Defendant states that any and all privileges, rights, franchises or immunities granted or conferred on complainant or its assignors, were knowingly taken subject to the exercise of any of the powers herein set forth whenever defendant saw fit so to do.

(7.) And defendant states that having exclusive and plenary power under the Constitution, statutes, Charter provisions and laws of the State to grant or withhold its consent to the complainant and its assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and
78 such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did when complainant desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainant's bill, and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainant and its assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise of right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a *license fee* for the exercise of such right so conferred on the aforesaid conditions, nor to require payment of a *general property tax on complainant's property.*

(8.) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainant's bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its Charter Article III section 26, clause fifth, by ordinance to *license, tax* and regulate street railroad *cars,* (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21087, approved
79 March 25, 1903, (being the same the enforcement of which complainant seeks to enjoin) which is as follows, to-wit:

[21,087.]

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon

which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday, or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every Person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October, and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed

guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven
83 shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

(9.) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privileges conferred upon the complainant or any of its assignors; that the obligations assumed by complainant and its assignors in the respective ordinances conferring franchises, rights and privileges were in no sense *license fees* or *license taxes* upon *street cars*, but only conditions under which the city consented that said complainants and their assignors could obtain the valuable right to the use of its streets, and in no way operated to exempt complainant from the imposition of *license taxes* and *fees* for the exercise of their business and the rights conferred by said franchise. On the contrary defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25.00 each year on each street car operated by any street car company and which license fee and tax complainant had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said company upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And defendant further states that when said complainant
83½ accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned, and, that it at all times, and all the assignors of said company, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21,087.

And defendant specially denies that the amount required to be

paid is as alleged by complainant "absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it and to the proper discharge of the obligations imposed upon it by the several special ordinances" by it set forth or cast a cloud on the title of the properties of complainant, which impairs its credit.

Defendant states that said *license fee or tax* is perfectly lawful and reasonable, and does not interfere with the conduct of complainant's business, but that if complainant is unable or indisposed to continue its said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790*a* of ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of its said franchises and chartered rights, which action complainant has declined to adopt, but on the contrary in open violation of said ordinance 21087, operates street cars and engages in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10.) Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies
84 equally with complainant, and that it agreed on June 16, 1898, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinances 19392 and 19393 and referred to in said complainant's bill, and without which the same would not have become effective, to accept all obligations therein imposed on said complainant, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways: and said respective assignors of complainant entered into similar agreements as a condition permitting them to assign such rights or franchises to complainant, wherein said assignors and each of them agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

(11.) Wherefore, defendant having fully answered prays to be hence discharged without day and that complainant be required to pay its costs herein incurred.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant, the City of St. Louis.

And afterwards on the 2nd day of July, 1904, a replication was filed in said cause, which is in words and figures as follows, to-wit:

Replication.

In the United States Circuit Court of St. Louis, Missouri.

United States Circuit Court, St. Louis, Mo.

No. 4987.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Replicant,
vs.
CITY OF ST. LOUIS, Defendant.

This replicant, the St. Louis & Meramec River Railroad Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendant, the City of St. Louis, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contain- material or effectual in the law to be replied unto, confess-, or avoid-, or traverse-, or deny, is true: all which matters and things this replicant is ready to aver, maintain, and prove, as this Honorable Court shall direct and humbly prays as in and by its said bill it hath already prayed.

JEFFERSON CHANDLER,
Solicitor for Replicant.

85 And afterwards, to-wit: on the 22nd day of December, A. D. 1904, there was filed in said cause a Stipulation, which said Stipulation is in words and figures as follows, to-wit:—

(*Stipulation.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. In Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Stipulation.

It is hereby agreed and stipulated by the defendant, the City of St. Louis, through its counsel, that the preliminary injunction granted by this Court on motion of the United Railways Company, of St. Louis, and the St. Louis Transit Company, be extended on motion of the St. Louis & Suburban Railway Company, and the St. Louis & Meramec River Railroad Company, so as to include the

two last named complainants within the order granting a preliminary injunction restraining the City of St. Louis from enforcing an alleged ordinance No. 21087 against said complainants, the St. Louis & Suburban Railway Company and the St. Louis & Meramec River Railroad Company, or either of them, with same effect as if the order made had included said last named companies and no greater.

CHAS. W. BATES,
WM. F. WOERNER,
Counsel for the City of St. Louis.

And thereupon, to-wit: on the said 22nd day of December, A. D. 1904, there was filed in said cause a Motion for a Preliminary Injunction, which said Motion for a Preliminary Injunction is in words and figures as follows, to-wit:—

(*Motion for a Preliminary Injunction.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. In Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Complainants' Motion for Preliminary Injunction.

Now come the complainants in the above entitled cause and move the Court to grant a preliminary injunction restraining and enjoining the defendant, City of St. Louis, its officers and agents, from in any wise asserting or seeking to enforce any of the provisions of the alleged ordinance of said City, No. 21087, assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents, and each of them, from in any wise, by suit, or otherwise, asserting or enforcing said alleged ordinance No. 21087 against complainants, until
86 the further order of this Court in the premises.

And in support of said motion said complainants refer to their bill herein, and to the ordinances of the City of St. Louis recited in said bill.

JEFFERSON CHANDLER,
JOHN LIONBERGER DAVIS,
Counsel for Complainants.

And thereupon, to-wit: on the said 22nd day of December, A. D. 1904, the following among other proceedings were had and appear of record in said cause as follows, to-wit:—

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

4988.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Preliminary Injunction.

The Court having fully considered complainant's application for a preliminary injunction, doth order that said application be granted, and it is now

Ordered, adjudged and decreed by the Court, that the defendant, City of St. Louis, its officers and agents, be, and they are hereby enjoined and restrained, until the further order of this Court, from in any wise asserting or seeking to enforce any of the provisions of an alleged ordinance of the said City, numbered 21,087, assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or either of them, on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents, and each of them from in any wise, by suit or otherwise, asserting or enforcing said alleged ordinance numbered 21,087 against the complainants, or either of them.

ELMER B. ADAMS, *Judge.*

87 And afterwards, to-wit: on the 24th day of November, A. D., 1905, there was filed in said cause Testimony for complainant, which said testimony for complainant is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. In Equity.

4988.

St. Louis & Meramec River Railroad Company, Complainant,
vs.
City of St. Louis, Defendant.

(*Testimony.*)

Testimony on behalf of Complainant in the above entitled cases taken by consent of parties before James R. Gray, as Special Examiner, at his office Room 342 Custom House Building, Eighth-Ninth-Locust-Olive Streets, St. Louis, Mo., beginning at 10:30 o'clock in the morning of Tuesday, the seventh day of November, A. D. 1905. It being agreed by the parties that this testimony may be used in either of the above entitled causes:

Appearances: Jefferson Chandler, Esq. for Complainants. W. F. Woerner, Esq., for Defendant.

Testimony.

E. P. Sommers, a witness on behalf of the Complainants, after being duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Chandler:

Q. Mr. Sommers, will you state your full name please?
A. Edgar P. Sommers.
Q. What relation, if any, have you to the St. Louis & Suburban Railway Company?
A. I am Secretary and Treasurer.
Q. How long have you been secretary and treasurer?
A. About three years.
Q. What relation, if any, do you have to the St. Louis & Meramec River Railroad Company? Or Railway Company? I have forgotten which?
A. I am not an officer of that company.
Q. Do you know anything personally of its business?
A. Yes, sir.
Q. Do you know anything of the origin of the St. Louis & Suburban Railway Company system?
A. Yes, sir.
Q. State what its origin was?

Mr. Woerner: In order to be able to intelligently determine whether objection is to be made to this testimony or not I will request

counsel for the Complainant to state the object of the testimony, and what he proposes to prove by this witness.

Mr. CHANDLER: Well, I have no objection to that. The Bill in the Suburban case charges that the present system originated by possession of what is known as the narrow gauge system, beginning and ending wholly outside of the City of St. Louis; and it's that allegation that I want to prove.

Mr. WOERNER: I object to that line of testimony on the ground that it is immaterial, irrelevant and incompetent to the issues that are made in this case; also because such matters can be proved
88 only by competent testimony so far as the Defendant—City of St. Louis is concerned, to-wit: the ordinances; even if such testimony were otherwise admissible.

A. It was first built as the old steam narrow gauge road and started just west of the city limits, which at that time were a little west of Grand avenue. This road, or rather that narrow gauge road had changed hands a number of times. After that there was a cable line, the St. Louis Cable & Western, was constructed, and ran out as far as Grand and Olive, to Grand and Olive, or Vandeventer and Morgan; this road was operated at a loss and went into the hands of a receiver. About 1886, I think it was or somewhere around there, they started the construction on that road. It was operated for five or six years at a loss. Then a company was organized, known as the St. Louis & Suburban Railway Company, and bought up this Cable & Western and the narrow gauge road; after that the St. Louis & Suburban Railway Company reconstructed the whole system; changed it from a narrow gauge steam railway and cable road to an electrical one, and so operated it up to the present time.

Mr. WOERNER: I now move that the answer of the witness be stricken out for the reason given above in objecting to his testimony, and for the further reason that it appears that most of what witness has stated should have been proved by ordinances which would have been binding on the City of St. Louis; for the further reason that most of what he has stated should be evidenced by writing, and not subject to the verbal testimony of the witness; also because all that has been stated is immaterial to any legal issue raised in this case.

Q. What was the Western terminus of the Narrow Gauge System of which you have spoken?

A. The steam narrow gauge road?

89 Q. Yes.

A. Florissant; the town of Florissant.

Q. State whether or not any portion of that line at the time you spoke of was laid within the limits of the City of St. Louis?

A. The narrow gauge? Yes, sir; it was; it started a little west of Grand avenue.

Q. I understood you to say the limit on that side was Grand avenue?

A. Yes, sir; it was.

Q. Then state at the time of its origin whether or not any part of the line was inside the city?

A. No, sir; it was not.
Q. At what time did the reconstruction that you speak of occur?
A. About 1890.
Mr. WOERNER: Well, now, if I may interrupt you—you don't mean to say that Grand avenue was the western limit of St. Louis in 1890; do you?
A. No, sir.
Q. Do you know what time the reconstruction occurred?
A. About 1890, I think.
Q. Describe the system of the St. Louis & Suburban Railway Company as it now exists?

Mr. WOERNER: I object to the question for the same reason as first above given.

A. Do you mean as to its operation, or——
Q. Its geographical existence—where does it begin and where does it end and over what streets does it pass?

Mr. WOERNER: I object for the reasons first above given; and also because the ordinance, the validity of which is here in question being Number 21087, does not purport to impose any tax or license fee on the Complainants, or either of them, for any passengers carried outside the limits of the City of St. Louis, but is confined in its operation to cars operated in the City of St. Louis; therefore whether said road extends beyond the city limits, and if so to what extent and whither, is immaterial in determining any of the issues in this case.

A. It starts at Fourth and Elm and runs north on Fourth to Locust, west on Locust to Thirteenth, over Thirteenth to Linden, over to Fourteenth, north on Fourteenth to Wash, west on Wash to Morgan, west on Morgan to 3919 Morgan, and from there on private right of way to Suburban Gardens, thence north to Florissant and Ferguson. The Union Avenue line runs from Forest Park to Walnut Park, and from there runs over Clarendon avenue and the Suburban's right of way to Union avenue; and over Suburban right of way north on Sarah street to O'Fallon Park; and south over Suburban right *right* of way on Sarah street to Manchester avenue, west on Manchester avenue to Maplewood Loop, thence west over private right of way and on public roads and streets of St. Louis county to the City of Webster and the City of Kirkwood and on to Meramec Highlands. Another line runs from 6100 Maple avenue, the city limits, over public roads to 66th street, south on 66th street and right of way through the town of Clayton to Brentwood, and from Brentwood through Webster and Kirkwood; and also from Brentwood east over right of way to Forest Park; also another line from Ferguson Junction just north of Ramona Park to the town of Ferguson.

Mr. WOERNER: I now move that the answer of the witness be stricken out in so far as it refers to all portions of said road outside of the limits of the City of St. Louis.

Q. How many miles of the system that you describe lie within the

City of St. Louis, and how many miles lie outside of the City of St. Louis?

A. I don't believe I can answer that; I can give you the total mileage.

Q. Just answer as far as you can?

A. The total?

91 Mr. WOERNER: I want to object on the ground that such information can only be evidenced by the ordinances authorizing said railways to operate their roads and cars and not by verbal statements of this witness.

A. The total mileage is a hundred and four miles.

Q. Can you in the future leave with the Examiner the number of miles of said road outside the City?

A. Yes, sir.

Q. And will you do that?

A. Yes, sir.

Mr. WOERNER: I object to the witness leaving anything with the Examiner hereafter, unless such matter be first presented to counsel for defendant and his consent obtained thereto.

Q. What was the extent of the mileage of the system at the date of the Ordinance No. 21,087?

A. In miles? About 104 miles.

Q. Same as it now is?

A. Yes, sir.

Q. What is the longest and what is the shortest distance a passenger is carried by the Suburban System for five cents?

A. Eight miles for five cents, and eight miles for 2½ cents; that's the longest.

Q. What's the shortest? Any distance that a passenger wants to go?

A. Yes, sir.

Q. Any distance short of that that a passenger wants to go?

—. Yes, sir.

Q. What is the financial condition of the St. Louis & Suburban Railway Company?

Mr. WOERNER: I object to this question on the ground that what the financial condition of the St. Louis & Suburban Railway Company is has nothing to do with this case; and on the further ground that said question is irrelevant, incompetent and immaterial; and because the validity or invalidity of the ordinance in question

92 in this case cannot be determined by the financial condition of any particular road, for if the legality of said ordinance could be determined by such matters it might be legal as to some roads and illegal as to others, and it might be valid one year and invalid the next year; and for the further reason that the courts will not consider the reasonableness or unreasonableness of any ordinance by fluctuating circumstances, or by evanescent conditions of any one or more roads; and because the legality of any ordinance cannot be made to depend on whether the road is making money or losing

money; and for the further reason that if said ordinance could be made to depend on the financial condition of the St. Louis & Suburban Railway Company, no license or tax could be charged on a losing company, whereas it might be charged against a successful company; for all of said reasons I object to the question asked.

A. The road has always been operated at a loss.

Mr. WOERNER: I move that the answer of the witness be stricken out for the reasons given in the objection made to the question asked; and because whether said road was operated at a loss or not must be determinated by the figures of income and expense and not by a conclusion of the witness as to the fact.

Q. Was it, at the date of this ordinance that you speak of?

M-. WOERNER: Same objection.

A. Yes, sir.

Q. State whether or not at the date of the ordinance you speak of, to-wit: No. 21,087, the said System had issued any stock or bonds.

Mr. WOERNER: Same objection.

(Question withdrawn.)

Q. State whether the System has outstanding mortgage bonds, and if so, how many?

93 Mr. WOERNER: I object on the ground that it is immaterial what indebtedness of complainant is and whether they have got any mortgage bonds out or other debts, for the reason heretofore given in the objection to the next two preceding questions; and for the further reason that if there is any such indebtedness, it is postponed to the payment of the taxes and license fees called for in Ordinance No. 21,087; and the Suburban Road or any other Company cannot affect the right of the City of St. Louis to pass ordinances binding on them by any bonds or other obligations that they may enter into.

A. Yes, sir; seven and a half million dollars.

Mr. WOERNER: I now move that the answer of the witness be stricken out for the reasons given in the objections to the question asked; and for the further reason that such information must be obtained by documentary evidence, not the verbal statement of this witness, it being impossible for him to know of these things independent of the records of the company.

Q. What is the amount of its capital stock?

Same objection.

A. Seven million five hundred thousand dollars.

Q. Has the authorized capital stock been issued?

A. No, sir; four and a half million has been issued.

Q. Then the authorized stock is seven and a half millions, they have issued bonds to the extent of seven and a half million?

A. Yes, sir.

Q. And your capital stock consists of four and a half million actually put in?

A. Yes.

Q. What were the proceeds of the stock and bonds used for, for any purpose?

A. Constructing and reconstructing the system.

Q. Has there, or has there not been any dividend declared on the stock?

94 Mr. WOERNER: I object for the same reasons given in the objecting to prior questions, that these matters are of no concern in determining the validity of this ordinance; that whether this road makes money or loses money cannot in any shape, manner or form bear on the issue whether the City of St. Louis has a right to pass the ordinance in question, or whether said ordinance is valid or not.

A. No dividends have been paid.

Q. State whether or not the entire proceeds of the paper issued have been devoted exclusively to creating and benefiting the System.

Objected to for the same reasons heretofore given and because the answer must be a conclusion on the part of the witness and not a statement of facts.

A. They have been used exclusively for the construction work, reconstruction and betterments of the system.

Q. What charges does the System make for carrying passengers?

A. Five cents for adults; two and a half cents for children.

Q. State whether the fund—the fare charged—is adequate to meet the obligations of the System?

Mr. WOERNER: I object to the question as immaterial, irrelevant and incompetent; as a conclusion on the part of the witness; and as not bearing on any issue in this case; also because said charges have been fixed by agreement between the Complainant and the City of St. Louis in other ordinances of acceptance of the benefits and privileges conferred by the City of St. Louis upon Complainants in granting permission for operation of the roads.

Q. State whether the fund—the fare charged—is adequate
95 to meet the obligations of the System, thus described in the Bill of Complaint in this case in this language: "Required for the purposes of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it, and to the proper discharge of the obligations imposed upon it by the several special ordinances hereinbefore set forth."

Mr. WOERNER: I object on the ground that counsel refers to several special ordinances without stating what the ordinances are.

A. The fare as charged is not adequate to meet the obligations of the road.

Mr. WOERNER: I move that the answer of the witness be stricken out because it is a conclusion on his part without our being enabled to

determine how his conclusion was brought about; because it is not a statement of any facts and because the same is irrelevant, incompetent and immaterial upon the grounds hereinbefore assigned in objecting to said question; and for the further reason that whether said fare is adequate or not does not make any difference as to the right of the City of St. Louis to pass the ordinance in question; and for the further reason that the answer upon its face carries its own refutation, because it is shown that the fare for adults is five cents and the amount of the tax is only one mill per revenue passenger, the obligation to pay said taxes and licenses fees being paramount to any other obligations of said Company.

Q. To what extent is it paramount, Mr. Woerner?

Mr. WOERNER: To the extent that you have got to meet your taxes and license fees or you cannot operate the cars.

Mr. CHANDLER: No matter what amount you may choose to assess; you may as well meet this issue squarely.

96 Mr. WOERNER: I decline to meet the question because it is more properly addressed to the Court than to counsel; and for the further reason because said ordinance requires the payment of one mill only per passenger, whereas the fare is five cents per passenger, which shows that said company must have ample funds with which to meet the obligations of this ordinance; and for the further reasons that under the charter of the City of St. Louis if the said Company cannot meet its just and lawful obligations it is authorized to surrender its charter and quit business.

Q. Did this condition prevail at the date of ordinance No. 21,087?

Mr. WOERNER: I object to this question for the reasons heretofore stated; and also because the witness has already testified that the road always was operated at a loss ever since its organization, and therefore, according to his view of looking at the thing, they never should have paid any taxes of any kind to anybody.

Q. Mr. Stenographer, just change that question to make it read "at and prior to the date of the ordinance."

Mr. WOERNER: I object to any such interlineation of the question as will make my objection without force; ask the question over again if you wish to. I wish the record to show the question as originally asked by Mr. Chandler.

(Here follows some colloquy between counsel; at the conclusion of which the question is withdrawn.)

Q. State whether this condition prevailed at and prior to the enactment of ordinance No. 21,087?

Mr. WOERNER: I wish now to remove my objection that I made to the question that was withdrawn.

97 A. It did.

Q. State under what circumstances and for what reasons the fare of five cents for adults and two and a half cents for children is collected.

Mr. WOERNER: I object to the question on the ground that the reasons are utterly immaterial and have noth- to do with the validity of the ordinance in question.

A. It is done by City Ordinance; we are allowed to collect five cents for adults and two and a half cents for children.

Mr. WOERNER: I move that the answer of the witness be stricken out because such testimony must be shown by the ordinance itself, if such is the fact.

Q. Do you know whether such charge is the result of any contract between the City and the Suburban System?
A. Yes, sir.

A. I move to strike out the answer on the ground that any such contract would have been in writing and could only be proven by such writing or ordinance, and not by verbal testimony; and for the further reason that the answer of the witness is his conclusion on the situation and not a narration of any fact.

Q. Are you familiar with the financial and contractural relation between this System and the City?
A. Yes, sir.
Q. In what capacity do you act for the System, if at all?
A. As secretary and treasurer; and auditor.
Q. Secretary, treasurer and auditor?
A. Yes, sir.
Q. In the exercise of the authority of these several offices do you have personal knowledge of outstanding contract made by the System with the City?
A. Yes, sir.

Mr. WOERNER: I want to ask the witness if these contracts and agreements which he has reference to are not in every instance in writing?

98 Mr. CHANDLER: I object to the question as out of time and as a question which should be deferred to the cross examination, if answerable at all.

Q. The answer states here, Mr. Sommers, that ordinance No. 21,087 is applicable to persons engaged in transporting passengers; do you know whether there is a system of transporting passengers in the City of St. Louis by hacks and coaches.
A. Yes, sir.
Q. Is there such a system?
A. Yes, sir; there is.

Mr. WOERNER: I object to the question as irrelevant, incompetent and immaterial and because the ordinance in question does not refer to any hacks, and if it did, such fact would not bear on any issue in this case.

Q. Do you know whether there are steam railroads operating between different points in the City of St. Louis?

Same objection.

A. There are a number of them, of the steam railways, which engage in that business.

Q. What are they?

Same objection.

A. The Wabash, the St. Louis, Kansas City and Colorado; the Missouri Pacific; and the St. Louis, Iron Mountain and Southern.

Q. Do you know to what extent there has been, if at all, automobile arrangements made for the carrying of passengers during the life of this ordinance and since and prior to the enactment of the ordinance?

Mr. WOERNER: I object to the question as irrelevant, incompetent and immaterial; and on the further ground that automobiles are taxed for the privilege of running by separate ordinances
99 from the one here in question, just as heavily as street cars are.

A. There has been an automobile line to carry passengers.

Q. Within the City of St. Louis?

A. Within the City of St. Louis.

Q. Do you know whether such traffic in passengers was in competition with Complainant's System?

Mr. WOERNER: I object for the reasons heretofore given as being irrelevant, incompetent and immaterial.

A. It was in competition.

Q. Do you know whether it operated to diminish the revenue of Complainant's System?

A. It did.

Q. Do you know whether steam railways carrying passengers in the City as you have stated above operate *the revenue of Complainant's System?*

A. It did.

Mr. WOERNER: Same objection.

A. I do.

Q. Do you know whether such traffic in passengers by steam railways operated to diminish the revenues of Complainant's System?

Same objection.

A. I do.

Q. Did it or did it not?

A. It did.

Q. I ask you the same question with reference to hacks?

Same objection.

A. It also diminished the revenues.

Q. I will get you to state whether Complainant's System has paid to the City of St. Louis from time to time when due all the
100 money called for by any ordinances of the City of St. Louis, except this one mill tax?

A. Always paid them on time.

Q. In full.
A. In full.
Q. Do you know whether Plaintiff's System has kept and performed all its contracts with the City with respect to the payment of money and improvements of streets in the City that have devolved upon it by ordinance?

Mr. WOERNER: I object to the question as calling for a conclusion on the part of the witness and as immaterial, irrelevant and incompetent.

A. It has always met its obligations.
Q. In every respect?
A. Yes, sir.
Q. Does this testimony and this answer apply equally to the St. Louis & Meramec River Railroad Company?
A. It does.
Q. What per cent. on the gross earnings of the two systems is the charge for children; what per cent. of the gross earnings of the system is derived from the fares received for children?
A. I cannot state that exactly just now; I don't know that I understand what you want.
Q. Well, I will put it this way; what per cent. of the gross earnings derived from carrying children is exacted under Ordinance No. 21,087?

Mr. WOERNER: I object on the ground that this is a conclusion on the part of the witness and is not proper to be asked; the proper way to get at it is to ask the fare that is charged for minors, or rather children, and let that be computed by the Court; and on the further ground that the witness has already stated that part.
Q. I only want to save the Court the arduous labor of that computation.
Mr. WOERNER: I don't think it will be any arduous labor.

101 Q. Well, answer the question.
A. Four per cent.
Q. And what per cent. is exacted for the carrying of adults under said ordinance?

Mr. WOERNER: Same objection.

A. Two per cent.
Q. Is or is not said exaction under said ordinance a violation of the contract with the City to charge five cents for adults and two and a half cents for children?

Mr. WOERNER: I object to the question on the ground that it is clearly an improper question for a lawyer to ask any witness because it so palpably calls for a conclusion of law on the part of the witness; and because said matter is purely a question of law and does not call for any fact; and for the further reason that the Court, as it sits in judgment in this case, is competent to pass on said question without being assisted in its conclusions by the opinions of a lay witness.

A. It is in violation of the contracts.

Q. This bill contains this allegation: "That among the lines of street railway in said City of St. Louis owned and operated by the St. Louis & Suburban Railway Company, are lines constructed, maintained and operated under and by virtue of the provisions of Ordinance No. 19,350 of said City of St. Louis, approved, April 5, 1898." Do you know whether that is a fact or not?

A. It is a fact; they were built and operated according to the franchise.

Q. Do you know whether the right to charge and collect five cents for adults and two and a half cents for children is necessary for the continued operation of the road of both of these Systems?

Mr. WOERNER: I object to the question for the reasons heretofore given in objecting to similar questions; also for the further
102 reason that the answer involves a conclusion on the part of this witness and does not call for any facts; and for the further reason that whether said charge and collection is or is not necessary doesn't cut any figure in this case and cannot be determined by verbal testimony; and that the Court will not declare this ordinance valid or invalid for anything that may be stated as the opinion of any one or more men, but will determine such question solely from the provisions of the ordinance itself.

A. It is necessary; for both Systems. And more too, if we could get it.

Q. State what effect, if any, the construction, reconstruction and equipment of Plaintiff's System has had on the development of the city along its lines?

Mr. WOERNER: I object on the ground that it has nothing to do with the merits or issues raised in this case; and also because both of Complainants never pretended to be charitable institutions acting for the benefit of the citizens of St. Louis; and because they are and always were corporations purely for the purpose of making money for themselves; and whether or not they succeeded in so doing doesn't concern the municipal authorities.

A. When they started with the Narrow Gauge——

Q. The question is whether it has occasioned the investment in property that has brought additional revenues to the City and been influential in developing and enriching the City.

Mr. WOERNER: I offer the same objection.

A. It has developed the city all along its lines and increased the value of property; where at first it was nothing but frame houses, now it is thickly settled portion of the City with fine residences.

103 Q. Has is operated to increase the taxable revenues of the City?

Mr. WOERNER: I offer the same objection; the same as to the preceding questions; it is a matter utterly indifferent to the issues

in this case, what the indirect consequences are of the operation and construction of these roads.

A. Yes, sir; it has.

Q. You may take the witness.

Cross-examination.

By Mr. WOERNER:

X Q. I don't believe I have any questions to ask this witness. Oh, yes, there is this question. Mr. Sommers, is it a fact that this ordinance No. 21,087 as you understand it is an amendment of the prior ordinance which requires a fixed tax of $25.00 as a license fee for running each car?

Mr. CHANDLER: I object as a matter not in issue at all. There is no ambiguity about the ordinance to be helped out by some prior enactment.

X Q. Do you understand that this ordinance is in place of the prior ordinance which made a fixed charge on each car?

Same objection.

A. Yes, sir.

X Q. Now, I want to ask you, whether both of your companies didn't pay that $25.00 per car tax every year so long as you were running these cars?

Mr. CHANDLER: I object because there is no such issue pending here. There is no ambiguity to be cleared up by any former action of the Company, and the contract to collect five cents and two
104 and a half cents cannot be broken down by any prior action of Plaintiffs and cannot be affected by these Companies on the stand.

X Q. They paid up every year $25.00 a car until the passage of this present ordinance?

A. Yes, sir.

X Q. And that sum was not paid under protest, was it?

A. No, sir

Mr. CHANDLER: Just wait a moment: I want to object to the question because there is no foundation laid for the showing of any knowledge of the witness on that subject.

X Q. That's all.

At this point the further taking of testimony herein was adjourned until tomorrow (Wednesday) morning at eleven o'clock a. m., November 15th, 1905.

11 O'CLOCK A. M., WEDNESDAY, *November 15th*, 1905.

At this time the further taking of testimony was resumed, the appearances for the respective parties hereto being as on yesterday.

Direct examination of witness Sommers continued by Mr. CHANDLER:

Q. How much of the System's railway mentioned in your evidence is over private right of way?
A. In the City of St. Louis?
Q. Yes.
A. Twelve miles and forty-four thousandths. (12.044.)
Q. How much is over private right of way and streets?
A. Well, over the streets—there's 28.772 miles.
Q. That includes the part of the line over streets and the part over private right of way?
105 A. No, that's just on the streets alone; I will give you the total in a minute. The Tracks on both streets and right of way would be 40.816 miles.
Q. And on the streets only exclusive of the right of way?
A. 28.772 miles.
Q. And on the private right of way?
A. 12.044.
Q. State whether or not the acquisition of this private right of way — from the City or from independent owners?

Mr. WOERNER: I object to the question as going into irrelevant matters that have nothing to do with any of the issues in this case.

A. The private right of way was from independent owners and not from the City.
Q. State whether or not the acquisition of that private right of way was expensive or not?

Mr. WOERNER: I object to the question on the ground that the answer called for will be entirely immaterial to any issue in this case, it being utterly immaterial so far as the validity of this ordinance is concerned what price was paid by the Complainant for the acquisition of any private right of way or whether said price was big or little or whether they acquired it by gift, or how they did acquire it.

A. To the best of my knowledge, it was.
Q. Do you know at what time the private right of way was acquir d from Grand avenue east?

Mr. WOERNER: If there is any such—better add that.

A. The private right of way from Grand avenue east?
Q. Do you go over any private right of way from Grand avenue east—does either System?
A. Yes, sir.
106 Q. When was the private right of way acquired in the first instance from the owners?
A. Very recently—the right of way east of Grand avenue; it's only about 150 feet.
Q. When was the private right of way west of Grand avenue acquired?
A. The majority of it in the years 1871, 1872 and 1873.

Q. Do you remember the date when the "scheme and charter" went into effect?

A. No, sir.

Q. Assuming that the Scheme and Charter went into effect in 1876, was the acquisition of this private right of way west of Grand avenue before that date?

A. Before that date; yes, sir.

Q. You say it was?

A. Yes, sir.

Q. What company operated over the private right of way previous to the enactment of the Scheme and Charter in 1876?

Mr. WOERNER: I object to the question because it has nothing to do with this case.

A. To the best of my knowledge it was the St. Louis & Florissant Railroad, the West End and Narrow Gauge, and the St. Louis Central & Western.

Q. Were the railroads that you have just mentioned a part of the private System, the two Systems?

A. Yes, sir.

Cross-examination.

By Mr. WOERNER:

X Q. Mr. Sommers, how many miles of tracks of these companies are there in the City of St. Louis on the public streets and highways?

A. 28.772.

X Q. Does that include cars going both ways?

A. Yes, sir, single track.

X Q. How much of that is east of Grand avenue, can you
107 tell?

A. No, I cannot tell; these figures have been taken from the present City limits.

X Q. Well a large portion of it is, anyhow, isn't it?

A. Quite a large portion of it; yes, sir.

X Q. And of all the miles of tracks of these two companies east of Grand avenue you have a private right of way over about 150 feet only; that's correct?

A. Yes, sir.

X Q. An- that was only acquired a short time ago in order to enable your tracks to run over one block and make a shorter cut?

A. Yes, sir; that is east of Grand avenue.

X Q. How many cars do you run from, say, Fourth streets to Sarah street, at, say from seven o'clock to nine o'clock in the morning?

A. I cannot answer that; that's out of my department. You would have to take that up with the operating department.

X Q. Do you know what your schedule is as to the intervals between cars?

A. No, sir.

X Q. You know they run the cars about a minute apart, don't you?

A. I don't.

X Q. You do know that every one of these cars is crowded between those hours so that people cannot find seats, don't you?

A. What hours?

X Q. The hours I mentioned—from seven to nine o'clock in the morning, say.

Mr. CHANDLER: I object to the question on the ground that there is no charge made by the defendant in these cases as to inefficient management or service.

A. My office is at De Hodiamont and I cannot say what is going on down town.

X Q. Don't you know that your cars are crowded to overflowing in the evening with people going home and that you run
108 your cars just as fast as you can—what I mean is, at as short intervals as possible in order to accommodate the traffic?

A. I don't know.

X Q. Now, Mr. Sommers, I am asking you as a fair-minded man if you don't know that people have to stand in your cars all the time on account of the volume of the traffic?

Mr. CHANDLER: I object on the ground that there is no allegation to support the question and on the ground that witness has repeatedly answered that he does not know.

X Q. Well, what do you say?

A. My office is in De Hodiamont and I don't know what goes on down town.

X Q. Don't you sometimes leave the down town district at some time in order to get home?

A. No, sir.

X Q. You never do?

A. No, sir.

X Q. You never go home from seven to nine o'clock in the evenings?

A. No, sir; I go from De Hodiamont east on the cars.

X Q. Well, now are there not some occasions when you have been down town at that time of the day and have left there about that time to go west?

A. Yes, sir; once or twice.

X Q. Well now, I ask you, Mr. Sommers as a fair-minded man, whether people are not compelled to stand in your cars for lack of seats; I am not criticising your Company; I am asking you whether you don't know that traffic is so great that they cannot furnish cars to accommodate the people?

Mr. CHANDLER: I object to the question because there has been no foundation laid for knowledge on the part of the witness and because the witness has repeatedly answered that he doesn't know.

A. That's a question I cannot answer because I don't know.

109 X Q. Do you know how many people you carried last year?

A. Yes, sir.

X Q. I wish you would state what that number is?

A. Do you mean in the city alone or in the whole system?

X Q. Yes, in the city; and I am now referring to revenue or pay passengers.

A. Adult passengers—21,228,786; children, 1,677,573; total of 22,906,359.

X Q. For what year is that?

A. 1904.

X Q. Have you got the figures for 1903?

A. Yes, sir.

X Q. Just give those please.

A. Adults, 15,188,352; children, 1,251,523; total, 16,439,875.

X Q. Have you got the figures for the preceding year, 1902?

A. No, sir.

X Q. Have you got the figures for this year as far as you have taken any?

A. No, sir; I didn't have time to make those up.

X Q. Have you got any means of revenue besides the carrying of passengers?

A. We have.

X Q. What are they?

A. Rental of land and buildings; rental of freight privileges; and advertising, car advertising.

X Q. How large are your receipts from these sources besides your fares for passengers?

A. About 2 per cent.

X Q. I mean in figures?

A. I cannot give you those; I haven't those figures with me.

X Q. You mean that your receipts from these sources in proportion to the collection of fares amounts to about 2 per cent.?

A. Yes, sir.

X Q. How many cars do you operate, or did you operate last year?

A. About 110 cars a day.

110 X Q. And how many trips do they make?

A. I cannot answer that; I don't know.

X Q. Can you tell about?

A. Why, each conductor would average about six trips.

X Q. A day?

A. Yes, sir.

X Q. Have you got the figures showing how many trips you made during the year 1904?

A. No, sir.

X Q. Or any other year?

A. No, sir; I haven't those figures.

X Q. Now between Fourth street and Sarah street—all the cars of the Suburban run over those tracks do they not?

A. No, sir.

X Q. Which don't?

A. Union Avenue; Fairmount Avenue; and the line running to Clayton.

X Q. I mean those running within the City of St. Louis?
A. No, sir. The Union Avenue line.
X Q. Have you got any cars that operate wholly without the City of St. Louis?
A. Yes, sir.
X Q. What line?
A. The line known as the Brentwood Division; and the Florissant Division; and the Ferguson Division.
X Q. The Brentwood Division. They never come within the limits of the city?
A. No, sir; those that I mentioned don't.
X Q. And they are not affected by this ordinance, are they?
A. So I understand.
X Q. They are not included within the returns that you gave as of passengers carried in the City of St. Louis?
A. No, sir.
X Q. How much do you pay out in the way of interest on bonds?
A. $375,000.00.
X Q. Per year?
A. Yes, sir.
X Q. How much have you paid out for extensions of your roads in the county within the last, say, ten years?
A. I cannot answer that; I don't know.
111 X Q. How much have you paid out for extensions of your road, or any of them, within the City of St. Louis?
A. I cannot answer that; I haven't the figures with me.
X Q. How much have you paid out for construction and reconstruction?
A. Within what period of time?
X Q. Within any period that you can fix?
A. About three and a half to four million dollars.
X Q. What was that for and within what time?
A. I should say within the last 2½ to 3 years for reconstruction of lines.
X Q. Within the City of St. Louis?
A. City and County together.
X Q. I don't care about the county at this time; how about the city?
A. I cannot answer that.
X Q. Your Company has paid out a great deal of money in laying out these various lines in St. Louis county, didn't it?
A. Yes, sir.
X Q. Do you know how much?
A. No, sir.
X Q. You made these various extensions out into thinly settled region—at least as compared with city itself—with the idea of developing that country and ultimately obtaining the business, didn't you?
A. Yes, sir.
X Q. In every case of that kind, the road loses money at first, doesn't it?

Mr. CHANDLER: I object to the question unless the witness has personal knowledge.

A. So far as I know they do, yes, sir.

X Q. The idea is that ultimately when the sections build up they can carry the people who go to and from those districts, isn't it?

A. That's a fact.

X Q. And so long as the companies are doing that sort of thing and looking to the future in that way and extending their
112 lines to unsettled districts, it costs them more money than they make?

A. Yes, sir.

X Q. And that's what you've been doing?

A. Yes, in some places; yes, sir.

X Q. And that's why your company hasn't been paying any dividends?

A. No, sir.

X Q. You expect to look forward to the time when you will pay dividends don't you, by reason of this extension you are getting don't you?

A. Yes, sir.

X Q. And still notwithstanding the fact that you have been paying out these large sums of money and extending your lines into the country with the idea of discounting the future and are paying out these vast sums by way of interest on your bonds, still you state that you cannot pay the license tax that is called for by this ordinance on each car; is that right?

A. Yes, sir.

X Q. Was it your idea that the license tax or license fee must be postponed to all these other obligations?

Mr. CHANDLER: I object to the question as mere argument on the part of the counsel and as not calling for a fact on the part of the witness.

A. I think the mill tax for each passenger is unreasonable.

X Q. I didn't say anything about the one mill per passenger or anything of that kind; and I now move to strike out the answer as not responsive to the question.

A. We always have paid our license right along up to this time.

X Q. Why did you pay it?

Mr. CHANDLER: I object; this witness can only speak for himself but not for the motives of the companies.

X Q. Why did you pay it?

A. Because the vouchers were approved for payment.

X Q. Is that the only answer that you will give?

A. Yes, sir.

113 X Q. When you say that you have paid it, you mean the $25.00 tax per car, don't you?

A. Yes, sir.

X Q. And as I understand you the only reason you quit paying your license fee is because this is larger than $25.00 per car?

Mr. CHANDLER: I object as the witness is not authorized to speak for the company.

A. The vouchers were not approved and I didn't pay them.
X Q. Is that the only answer that you will give?
A. Yes, sir.
X Q. Do you know of any reason why the $25.00 tax was paid and not the tax called for by the present ordinance, except that the latter will amount to more than the former?

Mr. CHANDLER: I object as there is no issue raised as to the $25.00 tax; further, there is no ambiguity in the contract permitting complainants to charge the amount mentioned in the testimony; and there is no evidence to explain the contract needed, and therefore this is wholly immaterial.
Mr. WOERNER: In response to that statement from Mr. Chandler I want to say there is no question here as to any contract but only as to a tax on cars; neither has this anything to do with the five cents fare that the complainant is charging, the tax itself being determined by the amount equivalent to one mill per passenger carried on each car, and that the tax is not on the fare charged but is on the car; and moreover that if the complainant's position were correct that the original ordinance is a contract, that then the prior dealings between the parties would be evidence showing the interpretation put by the parties themselves on such alleged contract.
Mr. CHANDLER: I move to strike out this last so-called objection on the ground that it is mere argument.

114 A. I don't know.
X Q. Now, Mr. Sommers, I believe you stated in your direct examination that your capital stock amounted to 7,500,000 dollars, so far as the same was authorized; and that you have issued only 4,500,000, so that you still have 3,000,000 of unsold stock on hand; why don't you sell that stock, if you need some money and pay your taxes?
A. I cannot answer that.
X Q. Do you know of any officer of your company that can answer it?

Mr. CHANDLER: I submit that this is not a fair question to ask, whether the witness knows of any officer that will answer the question, no witness will swear to that; that's not a fair question and I object to it.

A. I cannot answer that.
X Q. And you have also issued bonds for seven and a half million dollars upon which you are paying interest?
A. Yes, sir.
X Q. Well, suppose you had not issued those bonds, do you think you would have enough money left to pay your taxes?

Mr. CHANDLER: I object to the question as calling for no fact and as a question from the very nature of which it shows that it cannot be answered by this witness.

Mr. WOERNER: For the reasons stated by Mr. Chandler I will withdraw the question.

X Q. Most of the cars of the Suburban System run down town don't they?

A. Let me ask, City or County; or City and County, do you want it answered?

X Q. Only those that are in the city?

A. Yes, most of those run down town.

X Q. Both of these roads are operating cars within the City of St. Louis, do they not?

A. Yes, sir.

X Q. I believe that's all.

115 Redirect examination.

By Mr. CHANDLER:

R. D. Q. What's the distance from Grand avenue, Mr. Sommers, to the eastern terminus of the road, of both systems?

A. From Grand avenue—east?

R. D. Q. I am not asking for the trackage, but for the distance between Grand avenue, the former boundary of the city, and the eastern terminus of your line?

A. A little over three miles.

R. D. Q. Now these outside lines spoken of feed the inside lines, don't they?

A. Yes, sir.

R. D. Q. I believe that's all.

(Signed) EDGAR P. SOMMERS.

Subscribed and sworn to before me this 23rd day of November A. D., 1905.

(Signed) JAMES R. GRAY, *Examiner.*

Stipulation.

It is hereby admitted by the defendant, subject to objection on account of the competency and materiality and relevancy of said admission as testimony, that the records of the License Collector's Office of the City of St. Louis show that the number of omnibuses, hacks and other like vehicles engaged in carrying passengers for hire in the City of St. Louis is about five hundred, many of whom are doing business under said licenses. Counsel for the Defendants objects to the introduction of said testimony for the reason that it is incompetent, immaterial and irrelevant and has no connection with any issue in this case, the licensing of said vehicles being a separate and independent thing from the licensing of street cars.

J. S. WALSH, JR., a witness on behalf of the Complainants, after being duly sworn, testified as follows:

116 Direct examination.

By Mr. CHANDLER:

Q. Mr. Walsh, state your full name, please?
A. J. S. Walsh, Jr.
Q. Have you any official or personal relation with either of the complainants in these cases, the St. Louis and Suburban Ry. Co., or the St. Louis and Meramec River Ry. Company?
A. I am Vice-President and General Manager of the St. Louis and Suburban Railway Company.
Q. You have had your attention called to the exaction by the City of St. Louis of one mill tax on every revenue passenger carried by the Suburban System?

Mr. WOERNER: I object to the question because it does not state a fact; there is no exaction of one mill on every passenger carried; the tax is on the car, the amount of which tax is only ascertained by being fixed at the rate of one mill for each passenger carried on the car.

A. Yes, sir.
Q. Has that exaction been paid?
A. No, sir.
Q. Why not?
A. We consider the tax illegal and unjust.

Mr. WOERNER: I move that the answer of the witness be stricken out as being pure opinion, not relating to any fact or tending to establish any fact; and for the further reason that whether the witness considers it to be legal or illegal and unjust, or the officers of these companies think so, is a matter utterly immaterial so far as the validity of this Ordinance is concerned.

Q. Do you know whether the Suburban System was developed under the conviction of the officers of the Suburban System that the
117 right to charge five cents for every adult passenger carried and the right to charge two and a half cents for every child carried was permanent and inviolable?

Mr. WOERNER: I object to the question on the ground that the conviction of the officers of these companies and the ideas upon which they proceeded in the so-called development of their road are utterly immaterial in this case and throw no light on any issue involved; and can in no way, shape, form or manner bind the City of St. Louis or affect its right to pass the Ordinance in question.

A. It's a fact that we are bound by the Ordinances to charge a fare not exceeding five cents within the city limits, and for children under the age of twelve a fare not exceeding two and a half cents—we are bound strictly by ordinances to do that.
Q. I don't think that answers my question.

Mr. WOERNER: I move to strike out the answer of the witness be-

cause if such is a fact the ordinances mentioned can only be evidenced by writing and cannot be gone into by verbal statements.

Q. Repeat the question to the witness. (Question read as above.)
A. We have considered it that we have no right to charge more than five cents for adults and two and a half cents for children.

Mr. WOERNER: I move that the answer of the witness be stricken out for the reason that it doesn't make any difference what they consider themselves bound by, neither do their opinions affect any question of law in this case.

Q. Mr. Walsh, what's the distance from the eastern terminus of the Narrow Gauge Road as it was before the City Charter was adopted, and the present western boundary of the city?
A. About four and a half miles.

118 Q. State which railroad was the first—which railroad composing a part of the Suburban System was the first to be constructed is the question?
A. The Narrow Gauge.
Q. When constructed, was the Narrow Gauge wholly outside the City of St. Louis?
A. The road itself was; I am not positive about the eastern terminals; there might have been a few feet, say a hundred feet of track within the city.
Q. And when the Scheme and Charter was adopted in 1876 the boundaries of the city, the western boundary of the city was moved further west, wasn't it?

Mr. WOERNER: I object on the ground that the Scheme and Charter will show that.

A. Yes, sir.
Q. What I want to get at is the length of this Narrow Gauge Road that was brought into the city by the adoption of this Scheme and Charter?
A. From one extension to the other extension of the limits it finally reached a distance of four and a half miles.
Q. How far is it from Grand avenue to the western boundary of the city now?
A. By our rails? About four and a half miles.
Q. Now the Narrow Gauge Railroad was organized under the Steam Railroad Act?
A. Yes, sir.
Q. And was in existence at the time of the adoption of the Scheme and Charter, that is prior to 1876, wasn't it?
A. It was constructed and operated in '76; the charter I believe was granted in '73, I am not positive as to the date.

Mr. WOERNER: I move to strike out the answer as incompetent, the only evidence showing when the Charter was granted being by that instrument itself.

119 Q. That part of the Narrow Gauge which extends from Grand avenue to the present Western boundary of the City is a part of your system, a part of the Suburban System, is it?

A. That part of the Suburban System now only goes to Vandeventer avenue and from Vendeventer avenue east it was the old Cable and Western.

Q. What was it from Vandeventer avenue to the western boundary of the city?

A. You know the old Narrow Gauge ran some five hundred feet west of Grand avenue on Olive; but we are not operating that part of the road from Olive to Morgan; we have cut off that part of the old road and have connected with the Cable and Western——

Q. At any rate from Grand avenue to the western boundary of the city is covered by a part of the old Narrow Gauge System, isn't it?

A. Yes, sir.

Q. The Narrow Gauge System to which you have succeeded?

A. Yes, sir.

Q. That's all.

No cross examination.

(Signed) J. S. WALSH, JR.

Subscribed and sworn to before me this 23rd day of November, A. D. 1905.

(Signed) JAMES R. GRAY,
Examiner.

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri. In Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

It is hereby stipulated and agreed by the parties to this action that the ordinances of the City of St. Louis mentioned in complainant's bill herein and numbered 18677-17007-17375-18231-18667-17008-19350-19392-21087 were enacted by the City of St. Louis, and that each of them applies to complainant's system of railway described in complainant's bill, so far as said system lies within the City of St. Louis and that each and all of them has and have been in all things acted under, obeyed, kept and performed by complainant, which ordinances are hereto attached, and made a part hereof, all of which have been accepted by complainant.

(Signed) JEFFERSON CHANDLER,
Attorney for Complainant.
CHAS. W. BATES,
WM. F. WOERNER,
Attorneys for Defendants.

At this point the further taking of testimony herein was adjourned until Friday morning, November 17th, A. D. 1905, at eleven o'clock A. M.

11 o'clock a. m.—Friday, November 17*th*, 1905.

At this time by direction of attorney for complainants herein the further taking of testimony herein on behalf of Complainants is discontinued without day, and these depositions are closed.

120 (18,677.)

An ordinance to authorize the Manchester Road Electric Railway Company to transfer its railroad tracks and all its rights, privileges and franchises obtained from the City of St. Louis to the St. Louis and Meramec River Company, and to authorize said last named company to acquire the same and to maintain and operate its double track passenger railroad over said tracks in pursuance of and in accordance with said rights, privileges and franchises so acquired.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

Section 1. The Manchester Road Electric Railway Company is hereby authorized and empowered to transfer to the St. Louis and Meramec River Railroad Company, and said St. Louis and Meramec River Railroad Company is authorized to acquire upon such terms as such companies may mutually agree, all and singular the railroad of, and also all the rights, privileges and franchises which have heretofore been granted to or conferred upon said Manchester Road Electric Railway Company by the City of St. Louis by its ordinances numbered seventeen thousand eight, seventeen thousand three hundred seventy five and eighteen thousand two hundred thirty one, and when said transfer is made said St. Louis and Meramec River Railroad Company is hereby granted and shall possess, exercise and enjoy said rights, privileges and franchises as fully as if originally granted to it, and shall maintain and operate the said railroad acquired by it from said Manchester Road Electric Railway Company in pursuance thereof and in accordance therewith. Provided, however, that this ordinance shall become void unless the transfer hereinbefore authorized is made within one year from the date of the approval of this ordinance; and provided, further, that in the event such transfer is made to it, said St. Louis and Meramec River Railroad Company shall and will take said ordinances subject to and will carry out and perform all the obligations, requirements, conditions and
121 restrictions therein imposed on said Manchester Road Electric Railway Company.

Sec. 2. This ordinance shall become null and void unless within sixty days after its approval the said Manchester Road Electric Railway Company and St. Louis and Meramec River Railroad Company shall file with the City Register their respective written acceptances of the provisions of this ordinance, and shall also file with the City Register the written consent of the Suburban Railway Company to the provisions hereof, and to the transfer to said St. Louis and Meramec River Railroad Company of the agreement of said Suburban

Railroad Company provided for in section five of ordinance number eighteen thousand two hundred and thirty-one.
Approved August 29th, 1896.

(17,007.)

An ordinance authorizing John K. Latt to erect a public drinking fountain.

Be it ordered by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority is hereby granted to John K. Latt to erect a public drinking fountain in front of his premises, situated at number twelve hundred and thirty-three Blair Avenue. The plans for said fountain shall be subject to the approval of the Board of Public Improvements.

SEC. 2. The water for said fountain shall be furnished by the City of St. Louis free of charge, and said fountain shall be under the control of the Water Commissioner.

Approved December 30th, 1892.

122 [17,375.]

An ordinance amendatory of ordinance number seventeen thousand and eight, entitled "An ordinance authorizing the Manchester Road Electric Railway Company to construct, maintain and operate a double track passenger railway on, along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power," approved December thirty-first, eighteen hundred ninety-two, by striking out sections one, two, six and seven, and inserting other sections in lieu thereof, and providing for the acceptance of said ordinance as amended.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Ordinance number seventeen thousand and eight, entitled "An ordinance authorizing the Manchester Road Electric Railroad to construct, maintain and operate a double track passenger railway on, along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power," approved December thirty-first, eighteen hundred and ninety-two, is hereby amended by striking out sections one, two, six and seven, and inserting in lieu thereof, the following:

SECTION 1. Authority is hereby given to the Manchester Road Electric Railway Company, its successors and assigns, to build, maintain and operate a double-track passenger railway, for public use, on and along the following route, to-wit: Beginning on the street known and hereinafter referred to as Manchester Road, at a point west of its junction with the Old Manchester Road, and where the tracks of the Lindell Railway Company leave said Manchester Road;

thence extending on and along said Manchester Road and across all streets and alleys and roads intersecting therewith, to the western limits of the City of St. Louis. And the said Manchester Road Electric Railway Company, its successors and assigns, may also construct, maintain and operate any and all curves, turn-outs, switches, sidings, crossovers and connections, and may make any and all excavations which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

The tracks of said road shall be laid from Kingshighway to Barron avenue, in the center of the street; from Barron avenue to a point about three hundred feet west from Kraft street, on the south side of Manchester Road, and from this point west to the city limits, in the center of the road, unless otherwise ordered by the Board of Public Improvements, which Board is hereby authorized to make such changes as to the designated portions of said streets to be occupied by said tracks as it may deem necessary.

SEC. 2. Said Manchester Road Electric Railway Company, its successors and assigns, may operate its railroad along the route authorized herein, by electricity, either by storage battery, the
123 conduit underground, by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power, may be erected and placed between the tracks of said railroad, or along the curbs of said streets, and from Kingshighway to Barron avenue, and also from a point three hundred feet, more or less, west of Kraft street, to the city limits. From Barron avenue to a point three hundred feet, more or less, west of Kraft street they shall be placed between the tracks, the wires to be not less than twenty feet above the surface of the street, the poles to be of iron and of such form and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said railway company, its successors and assigns, shall have the right to make any and all changes and improvements, from time to time, in its machinery, apparatus and appliances, which may be found necessary or advantageous to said company in its enterprise, provided the same shall meet the approval of said Board of Public Improvements. Said Manchester Road Electric Railway Company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the street over which it constructs its railroad, and the rails and ties of said road shall be so laid that they shall in no way obstruct, interfere with or impede the travel on the streets through which they are laid, and shall, at no point, be above the level of the roadway, even though said roadway be either above or below the established grade, but said rails shall, at all times, be on a level with all streets which said road crosses and intersects, and the said Manchester Road Electric Railway Company shall, at its own cost and expense, grade all streets

upon which its tracks are laid, for the full width of the streets, from building line to building line, to the satisfaction of the
124 Board of Public Improvements. From and after the completion of said railroad, said Manchester Road Electric Railway Company, its successors and assigns, shall run passenger cars over said railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes.

Said Manchester Road Electric Railway Company may run its cars on its railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of the machinery of said company, or by any other extraordinary accident or emergency shall not be deemed a violation of this ordinance.

The fare from any point on its line to any other point on its line as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons over five and under twelve years of age, and not exceed five cents for persons twelve years of age and over, for a continuous passage one way; or if in the future said Manchester Road Electric Railway Company, its successors or assigns, shall be able to make a contract and traffic agreement with any existing street railway, by which passengers may be carried from the western limits of the city to the terminus of such connecting line for a single fare, to be divided between the two roads, it shall make such contract and agreement or forfeit all its rights, franchises and privileges under this ordinance; and whenever such contract is made said company, its successors or assigns, shall operate owl cars between its eastern terminus and the city limits, as now pro-
125 vided by ordinance for roads having a down town terminus east of Seventh street and between Poplar and Carr streets.

And if the said Manchester Road Electric Railway Company shall ever sell or lease its line to or become consolidated with another company, or acquire ownership or control of another line, then the consolidated or purchasing company, its successors, assigns or lessee, shall be bound to carry passengers over its entire line in the city, as far west as the city limits, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over.

SEC. 6. In consideration of the rights and franchises granted by this ordinance, said railway company shall pay to the City of St. Louis, beginning five years after the acceptance of this franchise annually, on the first day of July, for the first five years thereafter, one thousand dollars per annum, and for the next five years, two thousand dollars per annum.

And said Manchester Road Electric Railway Company, its successors and assigns, further undertake, stipulate and agree, on the first day of July of each year, beginning fifteen years after the acceptance of this ordinance, to file with the Comptroller of the City of St. Louis a full and complete statement of the gross earnings of said railway company or its said line, for the preceding year, sub-

scribed and sworn to by its President and Secretary; and shall pay to the Treasurer of the City of St. Louis, within ten days after the filing of each and every such statement during the remainder of the term of said ordinance, the sum of three per cent. on the amount of its gross earnings for each year, which amount shall in no one year be less than three thousand dollars. Which said payments shall be in addition to all other taxes or license fees now or hereafter prescribed by law.

126 Should said Manchester Road Electric Railway Company at any time purchase, lease or in any manner whatsoever acquire the control or management of any other railway or line, or should it in any manner become the property of, or pass into the control or under the management of any other railway line, company or system, or should the property or franchises of said Manchester Road Electric Railway Company be reason of the adoption of a joint or general charge for several lines, or for any reason, or in any manner, be so managed or operated as to make a separate and distinct report of its gross earnings impracticable, then for such time the report or statement of gross earnings upon which said per cents. are to be paid, and which must be filed as stated, shall be determined and made as follows: The amount of gross earnings so to be reported for said purposes of taxation shall be in the same proportion to the gross earnings of the entire line, railway, company or system of which for the time being it forms a part, as the mileage of the Manchester Road Electric Railway Company bears to the mileage of such whole line, railway company or system. The Mayor, Comptroller, Register or Treasurer of the City of St. Louis shall have the right at any time to examine the books and papers of said company, its successors and assigns, or the books and papers of any other company or railway in conjunction with which it may be operated, for the purpose of ascertaining the gross earnings upon which the said per cents. are to be paid.

The failure on the part of the said company, or its successors, or assigns, or on part of any other company, railway or system, in conjunction with which it may be operated, to file a true and correct annual statement or report as herein provided, or to pay the aforesaid tax on gross receipts, within thirty days after such state-

127 ment should be filed, or after such tax becomes due and payable, shall work a forfeiture of the rights, privileges and franchises granted by this ordinance, and the amount of said tax shall also constitute a legal demand against said company; and any violation of any provisions of this section shall work a forfeiture of all rights, privileges and franchises granted under this ordinance.

SEC. 7. The Manchester Road Electric Railway Company, in accepting this ordinance, agrees to comply with the provisions of all general ordinances and charter provisions now in force and with all general ordinances and charter provisions affecting street railroads that may hereafter be enacted.

SEC. 2. Unless said Manchester Road Electric Railway Company shall file its written acceptance of the provisions of this ordinance with the City Register, within sixty days from date of the approval

of this ordinance, the provisions of this ordinance shall be void and of no effect.

Approved January 30th, 1894.

[18,231.]

An ordinance authorizing the Manchester Road Electric Railway Company to extend its tracks and to construct, maintain and operate its double track railroad along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power, and to construct and maintain feed wire lines and prescribing conditions therefor.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Manchester Road Electric Railway Company, its lessees, successors and assigns, is hereby authorized to extend its tracks and construct, maintain and operate a double track railroad, together with all necessary turn-outs, switches, sidings and loops, over, along, across and upon the streets, alleys and public places on the following route, viz.: From the intersection of Manchester avenue (formerly called Manchester Road) and Sarah street; thence northwardly on, along and over said Sarah street, and across all intervening streets, alleys and public places to the intersection of Sarah street with the tracks of the St. Louis and Suburban Railway Company; there to connect with the tracks of the St. Louis and Suburban Railway Company, with the privileges of acquiring
128 from said St. Louis and Suburban Railway Company the right to run its cars upon and over the tracks of said last named company and when so acquired the right is hereby given to operate cars on said tracks from said junction on Sarah street to the eastern terminus of the tracks of said St. Louis and Suburban Railway Company, by lease, traffic agreement or otherwise.

SEC. 2. Said railway company, its lessees, successors and assigns, may operate said extension along the route authorized herein in connection with its line of road to be operated under ordinance number seventeen thousand three hundred and seventy-five, by electricity, either storage battery, the conduits, underground, or by overhead wire system, through overhead and supplementary ground circuits, and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power may be erected and placed either between the tracks of said railroad or along the curbs of said streets, as may be directed by the Board of Public Improvements; said poles shall be of iron or steel, and the wires shall not be less than twenty feet above the surface of the street; said poles to be of such form and design and at such portions of the streets as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done. The location of the poles and tracks shall be submitted to the Board of Public Improvements for their approval,

and shall be placed where designated by said Board of Public Improvements, and such poles and tracks shall, at any time thereafter, be removed, at the expense of said railway company, to such other portions of the streets occupied by them as the said Board may by order direct. And the said railway company shall have the right to make all reasonable and proper excavations in said streets, and all changes and improvements from time to time in its machinery, apparatus and appliances, subject, however, to the approval of the Board of Public Improvements.

Before laying its tracks upon the unimproved portion of Sarah street, the said railway company shall cause such portion of Sarah street to be graded, so as to conform to the established grade, for its full width, from building line to building line, at the expense of said company, in such manner as may be approved by the Board of Public Improvements.

And the said company shall cause the grade of its roadbed and tracks to conform to the now, or hereafter established grade of Sarah street, and the rails and ties of said road shall be so laid that they shall in no way obstruct or interfere with or impede the travel on the streets through which they are laid, and shall at no point be above the level of the roadway, but said rails shall at all times be on a level with all streets which said railroad crosses or intersects.

From and after the completion of said extended line of railroad said Manchester Road Electric Railway Company, its lessees, successors and assigns, shall run passenger cars over said railroad every day of the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its said extended line of railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operation by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of machinery of said company or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance, and said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall operate owl cars between Sixth street and the city limits, as is now provided by ordinance for roads having a downtown terminus east of Seventh street, and between Poplar and Carr streets.

Sec. 3. In addition to the right of said company to erect and maintain feed wires and poles along the line of its railroad, as provided by section two of this ordinance, and by ordinance number seventeen thousand and eight and number seventeen thousand, three hundred and seventy-five, said Manchester Road Electric Railway Company, its lessees, successors or asigns, shall have the right and privilege of obtaining electric power for the operation of its railroad from its terminus at the city limits along the line of its route, including its extended line of railway herein authorized to be constructed and built, from the St. Louis and Suburban Railway Company by feed wires extending from the power house of said St. Louis and Suburban Railway Company to the line of said Man-

chester Road Electric Railway Company; and said Manchester Road Electric Railway Company is hereby authorized to erect and maintain poles for the carrying of said feed wires and to maintain and operate said feed wires over, along, across, and upon the streets, alleys and public places on the following route, viz: Beginning at the power house of said St. L ...is and Suburban Railway Company, situated near De Hodiamont Station, on or near the line dividing the City of St. Louis from the county of St. Louis; thence by the most feasible route as determined by the Board of Public Improvements, and over, along, across and upon all intervening streets, alleys and public places to the north end of the Skinker road; thence southwardly over, along, across and upon said Skinker road and over and across all intervening streets, alleys and public places to McCausland avenue; thence southwardly over, along, across and upon said McCausland avenue and over and across all intervening streets, alleys and public places to the line of said Manchester Road
131 Electric Railway Company on Manchester avenue (formerly called Manchester Road.) Such wires to be not less than twenty feet above the surface of the streets, and such poles to be of iron or steel, of such form, and placed at such distances and at such portions of the street as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done. The location of such poles shall be submitted to the Board of Public Improvements for their approval, and shall be placed where designated by said Board of Public Improvements; provided, that said Manchester Road Electric Railway Company, its lessees, successors, or assigns, shall, whenever ordered so to do by the Board of Public Improvements, remove such feed wires and poles authorized by this section from above the streets and other public places, and shall place such feed wires underground in such streets, alleys and public places in such manner as may be directed by the Board of Public Improvements, and to the satisfaction of such Board.

SEC. 4. Whenever tracks shall be laid by said company upon any unimproved portion of Sarah street, said company shall cause the spaces between its tracks and rails, and for two feet outside thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever such street is improved or paved, constructed or reconstructed, the spaces between its rails and for one foot outside of its tracks shall be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portion of said street.

SEC. 5. The rate of fare shall not exceed two and one-half cents for children over five and under twelve years of age, nor five cents for persons over twelve years of age, for a single continuous passage either way, between any two points on said railroad within
132 the city limits, or between any point on said railroad east of the city limits, and any point on the connecting railroad over which the said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall transport its passengers to and from Sixth street.

The rights and privileges granted by this ordinance shall become null and void unless said railway company shall, within sixty days after the signing of this ordinance by the Mayor, and before any work is begun on said extension, file with the City Register an agreement, duly and properly signed and executed by the St. Louis and Suburban Railway Company, which shall secure the transportation of passengers between the western terminus of the said Manchester Road Electric Railway Company at the city limits to any point upon the line of said St. Louis and Suburban Railway Company, or *vice versa*, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over, either by continuous passage or by transfer. All the rights and privileges granted by this ordinance shall become null and void if, and when, at any time hereafter said company, its lessees, successors or assigns, shall fail to afford transportation to its passengers from the city limits on the line of said Manchester Road Electric Railway to any point on the line of the St. Louis and Suburban Railway Company, and from any point on the line of the St. Louis and Suburban Railway to the western terminus of the said Manchester Road Electric Railway Company, for a single fare either way, either by continuous passage or by convenient transfer. Children's tickets shall be sold by conductors on the cars, two for five cents.

SEC. 6. Within thirty days after the signing of this bill by the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall execute its bond
133 to the City of St. Louis in the penal sum of twenty thousand dollars, with at least two securities, to be approved by the Mayor and Council, conditioned that it will save the city harmless on account of all damages that may be sustained by the city, or by any person or persons, firm or corporation, during the construction of said extension, or on account of the building of such road; and conditioned, further, that said company will faithfully comply with all the conditions of this ordinance. Said bond shall be renewed from time to time, whenever requested by the Municipal Assembly, if the security on said bond is found inadequate to the risk, or when requested to do so by the Mayor, and any failure to renew the same when so required shall work a forfeiture of this franchise.

SEC. 7. The work authorized by this ordinance shall be completed within six months after the signing of this ordinance by the Mayor, and said road shall be in operation within six months from the city limits to the eastern terminus of the tracks of the St. Louis and Suburban Railway Company, as provided in section five of this ordinance. Failure to comply with this section will forfeit all rights and privileges hereby granted; and said company shall remove from the streets any obstructions which may have been placed therein, and restore said streets to the same condition they were in before the work of laying the tracks was begun. Any failure of the company to comply with the conditions of this section shall constitute a breach of the bond provided in section six hereof, and cause a forfeiture of the rights herein granted.

SEC. 8. All of the provisions of city ordinances numbers seventeen thousand and eight and seventeen thousand three hundred and seventy-five, so far as the same are in force and apply to the present line of the said Manchester Road Electric Railway Company,
134 shall continue in force and apply to the entire line of railway, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

SEC. 9. The Manchester Road Electric Railway Company in accepting this ordinance agrees to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force, or which may hereafter be enacted and applicable to its entire line of railroad or any part thereof.

SEC. 10. In consideration of the rights and privileges hereby granted the said railway company shall be required and agrees to pay into the City Treasury on the first day of January, eighteen hundred ninety-seven, the sum of one thousand dollars, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred five, and the sum of two thousand dollars on the first day of January, nineteen hundred six, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred ten; such payments to be in addition to the annual payments provided for in section six of ordinance number seventeen thousand three hundred and seventy-five, approved January thirty, eighteen hundred and ninety-four; and all of the provisions of said section six of said ordinance number seventeen thousand three hundred and seventy-five concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company shall apply to the entire line of said railway company, including this extension; provided, that, in consideration of the right to build and operate the extensions covered by this ordinance, the total amount of the
135 gross earnings of the company paid to the city shall not be less than five thousand dollars per annum.

SEC. 11. This ordinance, and all rights and privileges and franchises granted hereby, shall cease and terminate January first, nineteen hundred twenty-five.

SEC. 12. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this ordinance shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

Approved December 28th, 1895.

(18,667.)

An ordinance to establish the grades of streets, avenues and alleys in the City of St. Louis.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The grades of streets, avenues and alleys named in

this ordinance are hereby established at elevations above the city directrix, as follows: North and south alley in city block number one thousand five hundred and eleven; at intersection with north line of Cherokee street, one hundred and thirty one and five tenths feet; at intersection with the south line of Utah street, one hundred and thirty eight and two tenths feet. North and south alley in city block number seven hundred and ninety-seven; at intersection with the north line of Lami street, thirty-five and six-tenths feet; at intersection with east and west alley in said block, thirty-one feet; at intersection with the south line of Shenandoah avenue twenty-six and four tenths feet. East and west alley in city block number seven hundred and ninety-seven; at intersection with the west line of Ninth street, twenty-seven and four-tenths feet; at intersection with the north and south alley in said block, thirty-one feet. North and south alley in city block number one thousand five hundred and sixty-three; at intersection with the north line of Miami street, one hundred and fifteen and one-tenth feet; at a point two hun-
136 dred feet north of the north line of Miami street, one hundred and sixteen and five-tenths feet; at intersection with the east and west alley in said block, one hundred and thirteen and seven-tenths feet; at intersection with the south line of Potomac street, one hundred and twelve and five-tenths feet. East and west alley in city block number one thousand five hundred and sixty-three; at intersection with the east line of Texas avenue, one hundred and fifteen and seven-tenths feet; at intersection with the north and south alley in said block, one hundred and thirteen and seven-tenths feet. North and south alley in city block number one thousand eight hundred and eighty seven; at intersection with the south line of North Market street, ninety-eight and six-tenths feet at a point two hundred and fifty three feet south of the south line of North Market street, one hundred and four feet; at its junction with Webster avenue, one hundred and seven and two-tenths feet. North and south alley in city block number two thousand one hundred and twenty-four; at intersection with the north line of Blaine avenue one hundred and forty four and five tenths feet; at intersection with the east and west alley in said block, one hundred and forty two feet; at intersection with the south line of Folsom avenue, one hundred ans thirty six and eight tenths feet. East and west alley in city block number two thousand one hundred and thirty-three; at intersection with the west line of Ohio avenue, eighty-three and four tenths feet; at intersection with east line of California avenue, ninety five and six tenths feet. East and west alley in city block number three thousand nine hundred and two; at intersection with the west line of Newstead avenue, seventy-seven and five-tenths feet; at intersection with the east line of Taylor avenue, eighty five feet. East and west alley in city block number four thousand five hundred and seventy-eight; at intersection with the west line of Newstead avenue, ninety-five and four tenths
137 feet; at intersection with the east line of Taylor avenue, one hundred and two and three-tenths feet. East and west

alley in city block number four thousand five hundred and eighty south; at intersection with the west line of Newstead avenue, ninety-one feet; at intersection with the east line of Taylor avenue one hundred and two and four tenths feet. East and west alley in city block number four thousand five hundred and eighty north; at intersection with the west line of Newstead avenue ninety-three feet; at intersection with the east line of Taylor avenue, one hundred and two and two-tenths feet. Florissant avenue; at intersection with Harris avenue, ninety-eight and two-tenths feet; at intersection with Red Bud avenue, ninety-nine and seven-tenths feet; at intersection with Athlone avenue, ninety-eight and two-tenths feet; at intersection with proposed Holly Avenue, ninety-six feet; at a point ninety-five feet north of the north line of proposed Holly avenue, ninety-five and eight-tenths feet; at a point two hundred and twenty feet north of the north line of proposed Holly avenue, ninety two and five tenths feet; at intersection with proposed Clarence avenue, eighty nine and two tenths feet; at intersection with Pope avenue, seventy-seven and five tenths feet.

Approved August 29th, 1896.

138 [17,008.]

An ordinance authorizing the Manchester Road Electric Railway Company to construct, maintain and operate a double track passenger railway, on along and across certain streets and highways in the City of St. Louis, and to operate its lines of railroad by electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Authority is hereby given to the Manchester Road Electric Railway Company, its successors and assigns, to build, maintain and operate a double track passenger railway for public use, on and along the following route, to-wit: Beginning on the street known and hereinafter referred to as Manchester Road, at its intersection with the western line of Kingshighway; thence extending on and along said Manchester road and across all streets and alleys and roads intersecting therewith, to the western limits of the City of St. Louis. And the said railway company, its successors and assigns, may also construct, maintain and operate any and all curves, turn-outs, switches, sidings, cross-overs and connections, and may make any and all excavations which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

139 The tracks of said road shall be laid from Kingshighway to Barron avenue, in the center of the road, from Barron avenue to a point about three hundred feet west from Kraft street, on the south side of Manchester road, and from this point west to the city limits, in the center of the road.

SEC. 2. Said railway company, its successors and assigns, may operate its railroad along the route authorized herein, by electricity, either by storage battery, the conduit underground or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power may be erected and placed either between the tracks of said railroad or along the curbs of said street and from Kingshighway to Barron avenue, and also from a point three hundred feet, more or less, west of Kraft street to the city limits; from Barron avenue to a point three hundred feet, more or less, west of Kraft street they shall be placed between the tracks, the wires to be not less than twenty feet above the surface of the street, and to be of such form and material and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said railway company, its successors and assigns, shall have the right to make any and all changes and improvements from time to time in its machinery, apparatus and appliances which may be found necessary or advantageous to said company in its enterprise, provided the same shall meet the approval of said Board of Public Improvements. Said company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the streets over which it constructs its railroad, and at all points where said road crosses any of the
140 streets of the City of St. Louis, the said railway company shall, at its own cost and expense, grade all streets upon which its tracks are laid, for the full width of said streets from building line to building line, to the satisfaction of the Board of Public Improvements. From and after the completion of said railroad, said Manchester Road Electric Railway Company, its successors and assigns, shall run passenger cars over said railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its said railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of the machinery of said company, or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance. The fare from any point on its line to any other point on its line, as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons under twelve years of age, and not exceed five cents for persons twelve years of age and over, for a continuous passage one way. The rights, privileges and franchises hereby granted are granted subject to the following condition and proviso, to-wit: Before said company shall be permitted to operate said road along the line above mentioned, or any part thereof, it shall enter into a binding contract with one or more other street railway companies whereby, for a single fare of five cents for adults, and two and one-half cents for children under twelve years of age, as hereinbefore provided, passengers may be conveyed

from the western limits of said city, as hereinbefore mentioned, by proper transfers, to the eastern, northern and southern ends of such connecting companies' lines.

141 SEC. 4. Whenever any part of said Manchester Road, through which said railway shall run, shall be repaired or reconstructed, said company shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of said street is repaired or reconstructed.

SEC. 5. Within one hundred and twenty days after this ordinance shall be approved, said company shall file its written acceptance in the office of the City Register, of all the provisions of this ordinance, and deposit with the City Treasurer the sum of two thousand dollars as security that it will, within one year from the date of the approval of this ordinance, in good faith begin the work herein provided to be done, and that it will complete the work within two years from the date said work shall be commenced. And unless the said company shall file its written acceptance of the provisions of this ordinance, deposit the above amount and commence work as herein provided, the rights and privileges herein granted by the provisions of this ordinance shall cease and become void, and the money deposited shall thereupon absolutely become the property of the City of St. Louis, and no claim shall hereafter be made or allowed to refund the same or any part thereof.

SEC. 6. In consideration of the rights and franchises granted by this ordinance, the said railway company shall pay to the City of St. Louis, annually, beginning from the time of the acceptance of this franchise, after the first five years of the franchise, one thousand dollars per year for five years; for balance of the franchise two thousand dollars per year.

SEC. 7. The said Manchester Road Electric Railway Company in accepting this ordinance agrees to comply with the provisions

142 of all general ordinances now in force, or that may be passed in the future governing the construction, maintenance and operation of street railroads.

SEC. 8. This ordinance and all the rights, privileges and franchises hereby granted shall cease and terminate January first, nineteen hundred and twenty-five.

Approved December 31st, 1892.

[19,350.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks from its present terminus on Locust street, near Sixth street, and construct a railroad over, along and across certain streets, in the City of St. Louis, and to operate its cars over and upon the tracks of certain other railroads, and to operate the same by electric power, and also authorizing the St. Louis and Meramec River Railroad Company to join with said St. Louis and Suburban Railway Company in said construction, and to maintain and operate its cars over the same tracks and route with electric power, and authorizing said companies to operate ambulance and funeral cars and carry household supplies, and prescribing conditions for the rights hereby granted.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company and the St. Louis and Meramec River Railroad Company, their
143 successors and assigns, are hereby authorized and empowered to extend the tracks of the St. Louis and Suburban Railway Company and construct, operate and maintain their respective lines of railway as follows: Beginning at a point in the south track of the St. Louis and Suburban Railway Company on Locust street, near the intersection of Sixth street, thence eastwardly with a single track curve on Locust street and Sixth street, connecting with the track of the Union Depot Railway Company on Sixth street; thence southwardly, over, along and upon said track of the Union Depot Railway Company on Sixth street to a point where the tracks of the Southern Electric Railroad Company connect with the tracks of said Union Depot Railway Company on Sixth street, near the north side of Pine street; thence south on and along said Sixth street, over and upon the track of the Southern Electric Railroad Company to a point near Elm street with the right to cross all intervening streets and railroad tracks; thence eastwardly with a single track curve connecting with the south track of the St. Louis Railroad Company on Elm street; thence east on Elm street over and upon the south track of said St. Louis Railroad Company to its terminus on Elm street near Broadway; thence east on Elm street with a single track over and across the tracks of the St. Louis Railroad Company on Broadway to the east line of Broadway; thence east on Elm street to the west line of Fourth street with a double track which may be used for such switching and standing of cars as may be incidental and necessary to the regular business of said companies; thence with a single curve track to connect the south track on Elm street with the east track of the People's Railway Company on Fourth street; thence north over and upon said east track of the People's Railway Company to Locust street; thence west with a single curve track on Fourth and Locust streets and across the west track of said
144 People's Railway Company to a connection with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street; thence west over and upon said north track,

and across the tracks of the St. Louis Railroad Company on Broadway to a point near Sixth street; thence west and across the tracks of the Cass Avenue and Fair Grounds Railway Company and of the Union Depot Railway Company on Sixth street to a connection with the north track of said St. Louis and Suburban Railway Company on Locust street near Sixth street; provided, however, that said companies may build, with proper curve connections with their track provided for above on Elm street and with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street near Fourth street, a temporary single track on Fourth street between Elm and Locust streets, east of and as near as practicable to the east track of the People's Railway Company, the east rail of said temporary track to be distant at least ten feet from the east curb of the street; and maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Company have been so reconstructed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company upon the east track thereof as provided above in this section, between Elm and Locust streets; said companies shall be required, and they hereby agree, to remove such temporary track and restore the street to its former condition, to the satisfaction of the Street Commissioner, whenever the tracks of the People's Railway Company are reconstructed as above provided, and said companies are able to begin the operation of their cars on the east track thereof.

If said companies fail to remove such temporary track
145 when they are able to begin the operation of their cars upon the east track of the People's Railway Company, after the tracks of said last named company shall have been reconstructed as above provided, such failure shall work a forfeiture of all the rights and privileges granted by this ordinance and shall constitute a breach of the bond given under the provisions of this ordinance, and the city shall remove such temporary track and restore the street at the cost of said companies, such cost to be recovered by the city against the bond given under the provisions of this ordinance.

SEC. 2. Said lines of railroad hereby authorized shall be operated by electric power, either by storage battery, conduits underground, the overhead wire system, through overhead and supplementary ground circuits, or any other electric system. Said companies may erect iron poles to carry overhead wires. The feed wires shall not be less than twenty feet above the surface of the street, said poles to be placed along the curbs of streets at such distances apart as may be deemed necessary for the safe and proper operations of said railroads, and the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company may also construct, maintain and operate all curves, turnouts, switches, sidings, crossings, crossovers and connections, make all excavations which are reasonably necessary and convenient for the operation of their tracks along the route which they are by this ordinance authorized to use and occupy. The general plan, char-

acter and location of the poles shall be submitted to and approved by the Board of Public Improvements.

SEC. 3. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, may run their cars over said route as hereby authorized, at a rate of speed not to exceed ten miles per hour.

SEC. 4. Whenever any of the streets through which the tracks of said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, authorized by this ordinance to be reconstructed, are laid, shall be repaired or reconstructed, said companies shall, upon being notified by the Street Commissioners so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed to the satisfaction of the Street Commissioner, and said companies shall cause the grade of the roadbed and tracks authorized by this ordinance to be constructed to conform to the grades now or hereafter established of the streets in which said tracks are laid, and at all points where said railroads cross any of the streets of the City of St. Louis.

SEC. 5. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, shall, within sixty days after the approval of this ordinance, file with the City Register their joint written acceptance of all the provisions hereof; and also their joint bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said companies, and each of them, jointly and severally, shall observe all the terms and conditions of this ordinance and all general ordinances of the City of St. Louis now in force, or that may hereafter be enacted in reference to street railways, and that they shall hold the City of St. Louis harmless from the payment of all or any damages and costs which may be established against the City of St. Louis by reason or on account of the
147 construction, operation and maintenance of said railroads, or either of them, or by reason of the failure of said railway companies, or either of them, to comply with all the terms and conditions of this ordinance; which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond is demanded by the Mayor, and given by said railroad companies, and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers, and the new bond filed with the Register of the city.

SEC. 6. Said companies may run United States mail, ambulance and funeral cars, and cars for the transportation of family goods and supplies (excepting coal) over the tracks hereby authorized.

SEC. 7. In consideration of the rights and privileges granted by this ordinance, said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, their succes-

sors or assigns, each year, until the expiration of the rights and privileges granted by this ordinance, — pay to the Treasurer of the City of St. Louis, for account of said city, the sum of three thousand five hundred dollars per annum, on the thirty-first of December of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

SEC. 8. The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

SEC. 9. This ordinance shall continue in force until February sixth, nineteen hundred thirty six.

Approved April 5, 1898.

[19,392.]

148 An ordinance authorizing the St. Louis and Meramec River Railroad Company to extend its tracks on Sarah street and to construct, maintain and operate its double track railroad along and across certain other streets and highways in the city of St. Louis, and to operate its line of railroad by electric power, and to construct and maintain feed wire lines; and prescribing conditions therefor; also to operate funeral and ambulance cars and to carry household supplies.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Meramec River Railroad Company is hereby authorized to extend its tracks and to construct, maintain and operate a double track railroad, together with all the necessary curves, turnouts, switches, sidings and loops, over, along, across and upon the streets, alleys and public places on the following route, viz.: From the intersection and connection of the double tracks of said railroad on Sarah street, in said city, with the tracks of the St. Louis and Suburban Railway Company on said Sarah street; thence northwardly with a double track on, along and over said Sarah street to Labadie avenue; thence with a single track over and along Sarah street to Ashland avenue; thence west with a single track over and along Ashland avenue to Fair avenue; also continuing the west track at and from the intersection of Sarah street and Labadie avenue westwardly with a single track over and along Labadie avenue to a point opposite the center line of Fair avenue, extended southwardly to Labadie avenue; thence northwardly with a single track over private property into Fair avenue; thence northwardly over Fair avenue to Ashland avenue; thence westwardly with a double track in Ashland avenue one hundred and forty-six feet four inches, more or less, to a point opposite the center line of Fair avenue extended south from Natural Bridge Road, or such distance as may
149 be necessary to reach the center of Fair avenue, whenever and wherever opened south from Natural Bridge Road to Ashland avenue; thence northwardly over private land, or northwardly so soon as the same shall be open, on, over and along Fair avenue to

Natural Bridge Road; thence, if necessary, by opening of Fair avenue, along and on Natural Bridge Road to Fair avenue; thence northwardly on, over and along said Fair avenue to Rosalie street; thence no-thwestwardly along and over said Rosalie street to Harris avenue; thence along and over Harris avenue to Florissant avenue. And said company, its successors and assigns, is also authorized to cross with its said tracks all intervening streets, alleys and public places, and also the tracks of any and all other street railroads upon said route.

SECTION 2. Said railroad company, its lessees, successors and assigns, may operate said extension along the route authorized herein, in connection with and as a part of its line of road operated, and to be operated under ordinances of the City of St. Louis, numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, by electricity, either by storage battery, conduits, underground or overhead wire system, through overhead and supplementary ground circuits, or any other electric system; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power, may be erected and placed either between the tracks of said railroad or along the curbs of said streets, as may be directed by the Board of Public Improvements; said poles to be of such form and design and in such portions of the streets as may be required by the Board of Public Improvements, under whose supervision all of said work is done. The location of the said poles and tracks shall be submitted to the Board of
150 Public Improvements for their approval, and shall be placed where designated by said Board of Public Improvements, and such poles and tracks shall at any time thereafter be removed at the expense of said railroad company, to such other portions of the streets occupied by them as the said board may by order direct. And the said railroad company shall have the right to make all reasonable and proper excavations in said streets and all changes and improvements from time to time in its machinery, apparatus and appliances, subject, however, to the approval of the Board of Public Improvements. And the said company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grade of said streets, and the rails and ties of said road shall be so laid that they shall in no way obstruct or interfere with or impede the travel on the streets through which they are laid, and shall at no point be above the level of the roadway; but said rails shall at all times be on a level with all streets which said railroad crosses or intersects. Before laying said tracks the said company shall cause the streets wherever such tracks are laid to be graded from curb to curb, and to the approval of the Board of Public Improvements. From and after the completion of said extended line of railroad or railway said St. Louis and Meramec River Railroad Company, its lessees, successors and assigns, shall run passenger cars over said railroad every day of the year during the life of this franchise between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its

cars on its extended line of railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangements of machinery of said company, or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance.

151 SECTION 3. In addition to the rights of said company to erect and maintain feed wires and poles along the line of its railroad, as provided by section two of this ordinance and by ordinances numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, said railroad company, its lessees, successors or assigns, shall have the right and privilege of obtaining electric power for the operation of its said extension from the St. Louis and Suburban Railway Company, by feed wires extending from the power house of said St. Louis and Suburban Railway Company to the said extension, carried on poles, along, over and across such streets and alleys of the said City of St. Louis as may be hereafter selected by said company and approved by the Board of Public Improvements and the location of said poles along such route shall also be approved by the said Board of Public Improvements before said company shall have the right to erect said poles.

SECTION 4. Whenever tracks shall be laid by said company upon any unimproved portion of the said route, said company shall cause the space between its tracks and rails, and for one foot outside thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever such street is improved or paved, constructed or reconstructed, the space between its rails and for one foot outside of its tracks shall be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portions of said street.

SECTION 5. The rate of fare shall not exceed two and one-half cents for children over five and under twelve years of age, nor over five cents for persons over twelve years of age, for single

152 continuous passage either way, between any two points on said railroad, within the city limits, including said extension and line of road now operated by said company within said city limits; or between any point on or to said railroad already operated or to be operated under this ordinance, east of the city limits, and on or to any point on the St. Louis and Suburban Railway Company's, over which the said St. Louis and Meramec River Railroad Company, its lessees, successors or assigns, now or hereafter may transport its passengers to and from Sixth street; making such transfers and using such transfer tickets as may be necessary.

At the time of filing this acceptance of this ordinance as provided herein, the said St. Louis and Meramec River Railroad Company shall file with the City Register the written acceptance of the St. Louis and Suburban Railway Company of all the provisions of this section.

SECTION 6. Within sixty days after the approval of this bill by

the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall agree therein to comply with the provisions of all general ordinances and charter provisions of said city affecting street railroads, that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad, or any part thereof, and shall execute its bond to the City of St. Louis, in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that it will save the city harmless on account of all damages that may be sustained by the city, or by any person, or persons, firm or corporation, during the construction of said extension, or on account of the building of said extension of said road; and condition- further, that said company will
153 faithfully comply with all the conditions of this ordinance, and with all the general ordinances and charter provisions of said city affecting street railroads, that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad, or any part thereof. Said bond shall be renewed from time to time whenever requested by the Municipal Assembly, if the security on said bond is found inadequate to the risks, or when requested to do so by the Mayor.

SECTION 7. The work authorized by this ordinance shall be begun within six months from the approval of the ordinance, and shall be completed within two years after the opening of Fair avenue from Ashland avenue to Natural Bridge Road.

SECTION 8. Said St. Louis and Meramec River Railroad Company, its successors and assigns, shall not allow freight cars to be run on any portion of its line within the City of St. Louis, excepting for the transportation of family goods and supplies (excluding coal), and for the use of persons living on or near the line of said railroad. Said company may run cars to carry such family goods and supplies, also United States mail, ambulance and funeral cars over its lines and this extension.

SECTION 9. All the provisions of the city ordinances numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, so far as the same are in force and apply to the present line of said St. Louis and Meramec River Railroad Company as the successor or lessee of the Manchester Road Electric Railroad Company, shall continue in force and apply to the entire line of railroad, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

154 SECTION 10. In consideration of the rights and privileges hereby granted, the said railroad company shall be required, and agrees, to pay into the city treasury, beginning two years after the acceptance of this ordinance, annually, on the first day of July, for the first five years thereafter, one thousand dollars per annum, and for each year thereafter, two thousand dollars per annum up to nineteen hundred and ten; and from and after the year nineteen hundred and ten the provisions of section six of ordinance seventeen

thousand three hundred and seventy-five concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company, shall apply to the entire line of said railroad, including this extension.

SECTION 11. This ordinance, and all the rights, privileges and franchises granted hereby, shall cease and terminate January first, nineteen hundred and twenty-five.

SECTION 12. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this ordinance shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

SECTION 13. The St. Louis and Meramec River Railroad Company, in accepting this ordinance, agrees to comply with the provisions of all general ordinances and Charter provisions affecting street railroads that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad or any part thereof.

Approved June 10, 1898.

[21,087.]

An ordinance to amend sections twenty-one hundred and
155 thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies em-
156 braced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be desig-
157 nated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors,

not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make report provided for in section twenty-one hundred
158 and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

159 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4988.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

I, James R. Gray, acting by consent of parties as Special Examiner herein, do certify that in the above-entitled causes now pending and undetermined in the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, there personally appeared before me at my office, Room No. 342 Custom House Building, Eighth, Ninth, Olive, Locust streets, St. Louis, Mo., on Tuesday, the Seventh day of November, A. D. 1905, at 10:30 o'clock A. M., and on divers days thereafter to which the hearing was from time to time adjourned, as appears from the record thereof, Mr. Jefferson Chandler on behalf of the complainants herein and Mr. Wm. F. Woerner on behalf of the Defendants herein, and E. P. Sommers and J. S. Walsh, Jr., witnesses produced on behalf of the Complainants herein; that the depositions of said witnesses were taken by consent of counsel of the respective parties, formal notice therof being waived by counsel for Defendants; that each of the said witnesses was by me duly sworn in the said causes and his deposition by counsel of parties reduced to writing from short hand notes taken and transcribed under my direction by a skillful stenographer, and read and subscribed by said witnesses in my presence, as appears in the record; that said depositions, as taken down in typewriting, are returned herewith to the Court in which said cause is pending.

I do hereby further certify that I am not of counsel or attorney for or related to either of the parties in this cause, or directly or indirectly interested in said suit, and that my fees amounting to $25.20 have been paid to me by Jefferson Chandler of counsel for Complainants.

In testimony whereof, I have hereunto set my hand this 23rd day of November, A. D. 1905.

JAMES R. GRAY, *Examiner.*

160 And afterwards, to-wit: on the 6th day of June, A. D., 1906, the following among other proceedings were had and appear of record in said cause, to-wit:—

4988.

ST. LOUIS AND MERAMEC RIVER RAILROAD CO., Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Now at this day this cause is argued by counsel and submitted to the Court.

And afterwards, to-wit: on the 17th day of September, A. D. 06, the following further proceedings were had and appear of rec- l in said cause, to-wit:—

4988.

T. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

This cause having been heretofore submitted to the Court, upon e evidence and proofs adduced, and the Court being fully advised ncerning the premises, it is now

Ordered, Adjudged and Decreed by the Court, that the defendant ity of St. Louis, its officers and agents be, and they are hereby per- etually enjoined and restrained from in anywise asserting or seek- g to enforce any of the provisions of an alleged ordinance of the id City, numbered 21087, assuming to impose a tax of one mill pon each revenue or pay passenger carried by the complainant, n cars used by them over its street railway in the City of St. Louis; at the said City of St. Louis, its officers and agents, and each of hem be, and they are hereby likewise enjoined and restrained rom in any manner, by suit or otherwise, asserting or enforcing aid alleged ordinance numbered 21,087 against the complainant, nd that complainant recover of said defendant its costs and charges herein expended and have execution therefor.

(Signed) G. A. FINKELNBURG, *Judge.*

September 17, 1906.

161 And afterwards, to-wit: on the 11th day of December, A. D. 1906, the following further proceedings were had and appear f record in said cause, as follows, to-wit:

(*Order Allowing Appeal, etc.*)

#4988.

ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Now comes said defendant by its solicitor and files and presents to the Court its Assignment of Errors and Petition for Appeal from the final decree heretofore rendered herein to the Supreme Court of the United States; upon consideration whereof, it is

Ordered that said petition be and it is hereby granted and that said defendant give an appeal bond for costs in Five Hundred Dollars; thereupon the said defendant presents such a bond conditioned as required by law, which is approved and ordered filed, and it is

Further Ordered that the Clerk of this Court make out and certify

to said Supreme Court a full, true and complete transcript of the record and proceedings in this cause. Citation issued and filed.

G. A. FINKELNBURG, *Judge.*

December 11th, 1906.

Which said Assignment of errors, Prayer for Appeal, and Bond are respectively in words and figures as follows, to-wit:—

(*Assignment of Errors.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4988.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

162 Comes now the City of St. Louis, defendant in the above-entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons:

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis impaired the obligations of any of the special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to construct, operate and maintain street railways in said City, precluded the defendant the City of St. Louis from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis, by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction, maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license tax by virtue of the special franchise ordinances granting it, or its
163 assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its Charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant The City of St. Louis prays that the decree of the Circuit Court be reversed, and that said Court be directed to enter a decree in favor of said defendant.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitor- for Defendant.

(Prayer for Appeal to the Supreme Court.)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4988. In Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

164 *Petition for Appeal.*

Now comes the City of St. Louis, the above-named defendant by its solicitors, and conceiving itself aggrieved by the final decree made and entered on the seventeenth day of September, A. D. 1906, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made and entered, duly authenticated, may be sent to said Supreme Court of the United States, at the City of Washington, D. C.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitor- for said Defendant.

St. Louis, Mo. Dec. 12, 1906.

(*Bond.*)

Know all men by these presents;

That we, The City of St. Louis as principal and Rolla Wells as surety are held and firmly bound unto St. Louis and Meramec River Railroad Company in the full and just sum of Five Hundred Dollars to be paid to the said St. Louis and Meramec River Railroad Company or its successors or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 12th day of December in the year of our Lord one thousand nine hundred and six.

Whereas, lately at the September term A. D. 1906, of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between St. Louis and Meramec River Railroad Company plaintiff and the City of St. Louis defendant decree was rendered against the said defendant and the said defendant has obtained an appeal
165 of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said St. Louis and Meramec River Railroad Company citing and admonishing it to be and appear in the Supreme Court of the United States at the City of Washington, D. C., thirty days from and after the date of said Citation.

Now the conditions of the above obligation is such, That if the said City of St. Louis shall prosecute said appeal to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of
Attest

CITY OF ST. LOUIS, [SEAL.]
[SEAL.] By ROLLA WELLS, *Mayor.* [SEAL.]
ROLLA WELLS. [SEAL.]
PATRICK J. REGAN, *Register.*

Approved
G. A. KINKELNBURG, *Judge.*

166 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4988.

ST. LOUIS & MERAMEC RIVER RAILROAD CO.
vs.
CITY OF ST. LOUIS.

For the reasons stated in the opinion filed in the case of United Railways Company *vs.* City of St. Louis, No. 4985, I am of opinion that the temporary injunction heretofore issued in this case should be made permanent, and it is so ordered.

Which said opinion filed in said case No. 4985 is in words and gures as follows, to-wit:

167 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS
vs.
CITY OF ST. LOUIS.

FINKELNBURG, *District Judge:*

After a careful examination of the record as now presented, I am persuaded to adhere to the position heretofore taken by Judge Adams at the preliminary hearing of this case, and for the reasons then so well stated by him in his opinion, viz: the inviolability of the contracts entered into between the City on the one hand and the Railway Company on the other hand.

Single detached provisions may indeed be quoted from constitution and city charter which, taken by themselves, would seem to authorize the passage and enforcement of the ordinance here in controversy. But of course these instruments must be construed as a whole and effect given the other portions of them.

In brief, I find that under the constitution, laws and city charter applicable to this subject the City of St. Louis had a right to enter into contracts with reference to the construction and operation of these street railways—that it did enter into such contracts and fixed the terms—that a contract having been entered into its terms were not open to alteration thereafter by the City alone—that ordinance No. 21087 is an attempted violation of the terms of said contracts—that therefore its enforcement ought to be enjoined.

Counsel for defendant in their brief (p. 61) admit that, "if the city had attempted by ordinance to increase the special amounts of fixed sums or on gross receipts that the various companies had contracted to pay in the ordinance conferring these franchises"

168 then the ruling in Detroit *vs.* Railway, 184 U. S. 368, would apply, because they say, "on that point there *was* a contract"; but they contend that in the case at bar no such attempt was made; that the City simply amended its license tax on street cars, and that as to this there never was any contract. I cannot agree with this view of the situation. We must look at the substance, not names. The so-called amended license tax is an exaction of two per cent. on the gross earnings of the complainant's railways *in addition* to what was specially agreed upon as a consideration for the right to construct and operate these railways. The substance and true meaning of such a provision cannot be changed by calling it by another name. As a contract is obligatory on the citizen so it must be binding on the public authority. As Judge Adams well said in the opinion referred to:

"If the City can after once exercising its power and fixing the terms and conditions of its grant, change them in one particular, it can in all. If it can increase the once fixed charge for occupy-

ing the streets (called license tax) by 2 per cent. on the gross income it can exact 50 per cent. or more, and of course can utterly destroy the value of the complainant's property. It is this kind of evasion of property rights which in my opinion the Constitution of the United States (Sec. 10, Art. I) is intended to prevent."

As to the power of the Municipal Assembly to deprive itself of the further right to enforce taxes by contract, the distinction between general taxes and so-called license taxes must be borne in mind. The latter are not within the usual constitutional prohibitions against exemptions, etc. The Municipal Assembly may license or not license a particular occupation or business, or it may exact a license tax for a number of years and exhaust its power to
169 exact any more, as I think it has done in this instance.

The contention that the prior ordinances under which these railways were constructed confer rights of way only, but not the right to use them, or, as defendant's counsel put it, a right "to be" but not "to do," strikes me as an unreasonably narrow construction of thos- prior ordinances. The granting part of these ordinances all contain the words: "To construct, maintain and operate," or words equivalent thereto. But this point is also fully considered by Judge Adams, whose entire opinion I adopt for the purpose of this decision.

In view of the premises I am of opinion that the temporary injunction heretofore issued in this cause should be made permanent, and it is so ordered.

170 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, James R. Gray, Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a full, true and complete transcript of the record and proceedings In case No. 4988 of St. Louis and Meramec River Railroad Company Plaintiff, *vs.* City of St. Louis Defendant, as fully as the same remains on file and of record in said case in my office, and that the original citation is hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at office, in the City of St. Louis, in the Eastern Division of said District, this fifth day of January in the year of our Lord, nineteen hundred and *and* seven.

[Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri,]

JAMES R. GRAY,
Clerk of Said Court,
By —— ——, *Deputy.*

[Endorsed:] No. 4988 United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. St. Louis & Meramec River Railroad Co. against City of St. Louis. Duly Certified Transcript in the above entitled cause.

THE UNITED STATES OF AMERICA:

The St. Louis and Meramec River Railroad Company, Greeting:

You are hereby cited and admonished to be and appear in the preme Court of the United States at the City of Washington rty days from and after the day this Citation bears date, purnt to an appeal, filed in the Clerk's office of the Circuit Court the United States for the Eastern Division of the Eastern Judicial strict of Missouri, wherein The City of St. Louis is appellant and u are appellee, to show cause, if any there be, why the judgment ndered against the said appellant, as in said writ of error menned, should not be corrected, and why speedy justice should not done the parties in that behalf.

Witness, the Honorable G. A. Finkelnburg Judge of the Circuit urt of the United States for the Eastern District of Missouri, this " day of December in the year of our Lord one thousand nine ndred and six.

G. A. FINKELNBURG,
United States District Judge for the Eastern District of Missouri.

'2 [Endorsed:] In Equity No. 4988 United States Circuit Court, Eastern Division of the Eastern Judicial District of issouri. St. Louis and Meramec River Railroad Company *vs.* he City of St. Louis. Citation. Filed Dec. 11 1906 James R. ray Clerk.

Service of the within citation acknowledged this 11th day of Dec. 906.

BOYLE & PRIEST,
Att'ys for Appellee.

Endorsed on cover: File No. 20,521. E. Missouri C. C. U. S. 'erm No. 195. The City of St. Louis, appellant, *vs.* The St. ouis & Meramec River Railroad Company Filed January 10th, 907. File No. 20,521.

Office Supreme Court, U. S.
FILED.
MAR 10 1908
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 195.)

THE CITY OF ST. LOUIS,
Appellant,
vs.
ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY,
Appellee.
No. 20,521.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

APPELLANT'S STATEMENT OF THE CASE.
ASSIGNMENT OF ERRORS.
POINTS AND AUTHORITIES.
ARGUMENT.

CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant, City of St. Louis.

J. W. Steele & Co., Prs., 18 N. Third, St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 195.)

THE CITY OF ST. LOUIS,
Appellant,

vs.

ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY,
Appellee.

No. 20,521.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT OF THE CASE.

This case, like its predecessor on the docket, is nearly identical with No. 193 (United Railways case). It is an injunction proceeding, brought originally by the complainant (here appellee) by bill in equity filed on April 12th, 1904, in the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri, against the City of St. Louis (here appellant) to restrain the latter from enforcing the provision of an ordinance known as No. 21,087, herein below referred to, passed by its legislative body, termed the Municipal Assembly.

Statement of the Case.

The jurisdictional ground alleged is conflict with the impairment of contract clause of the United States Constitution (Section 10 of Article I) and deprivation of property without due process of law and denial of equal protection of the law (Article XIV of Amendment). The allegations and contentions of the bill and answer are more fully stated below.

A preliminary injunction was awarded by the Court, and made permanent upon final hearing.

The case was heard upon bill, answer, replication and testimony. Appeal was duly granted, assignment of errors filed, bond given, and the case duly brought to this Court.

The appellant, City of St. Louis, is a municipal corporation organized under a charter in pursuance of a Special Constitutional Provision, Article IX, Sections 20 to 25 inclusive, of the Missouri Constitution of 1875. The charter provisions authorizing the above ordinance are referred to hereinafter.

The complainant (appellee here) at the time of the institution of this cause was a Missouri corporation engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways.

It received its franchise in 1896.

Complainant proceeded to acquire by purchase or merger another of the street-car lines in the City of St. Louis, the Manchester Road Electric Railway Co. (enfranchised in 1892 by ordinance 17,008 and later ones). Complainant itself, if there is no impropriety in stating what does not appear in the printed record, it may be suggested, was in turn absorbed by the United Railways Company since the

appeal in this cause was taken. But in this record complainant appears as the successor or assignee of said former street railway company (Manch. Rd. El. Co.). These "special" or franchise ordinances, for the old railway lines now constituting the complainant, are more particularly referred to hereinafter.

The general ordinance attacked in this cause is known as No. 21,087, and is set out in full in the pleadings and in the agreed statement in the transcript of the Record (Print. Rec., pp. 99-101). This ordinance was enacted and approved March 25th, 1903. It provides that every person, etc., corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay the License Collector of said City, a quarter annual license for each and every car used by them in transporting passengers, "the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months." (Print Rec., p. 100.) The manner of equipping cars to show the number of passengers carried, and the filing of a report, is also provided for. A refusal to comply with the terms of the ordinance is made a misdemeanor punishable by fine (which is, however, not a criminal but a civil proceeding in Missouri). The ordinance further provides that the license-tax therein called for shall not be construed as exempting or excusing the payment "of any sum agreed, assumed or required to be paid by the terms of any special ordinance or agreement or contract, nor as affecting the same in any way, nor as impairing or affecting any license theretofore obtained."

Set out in full, this ordinance is as follows (Print Rec., p. 99):

(21,087).

"An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transportating passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in contiuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number of figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be desig-

nated as beginning number; and also the number of figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table, and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties

of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license, and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed

as impairing or affecting any license heretofore obtained.

Approved March 25, 1903."

It is to be observed that the ordinance does not call for a percentage of gross receipts at all, but for a license tax on each separate car operated, the amount of which is to be determined as above stated.

This ordinance 21,087, imposing the aforesaid license tax is not an imposition for the first time of a license-tax on each street car from and after its passage in March, 1903, but on the contrary purports to be and is merely an amendment of the street car license-tax which was in force at the time and for many years theretofore had been in force, and was in force when all of the franchise ordinances were passed, and which fixed the license-tax at $25.00 for each car per annum. (Print. Rec., pp. 66, 72.) The function of the amending ordinance of 1903, No. 21,087, was mainly to substitute for this fixed sum of $25.00 a sum equal to one mill per passenger on each car.

All of the railway companies constituting the assignors of complainants (whose rights were acquired), as well as complainant itself, at all times complied with the old ordinance, and they have at all times paid the sum of $25.00 per car required to be paid under said ordinance, and continued so to do until the going into effect of Ordinance 21,087 (Print. Rec., pp. 66, 72).

But upon the passage of the latter, complainant refused to comply with any of its provisions; and when the City served the required notice and threatened to enforce the ordinance against complainant, it instituted this cause to restrain it, on the alleged ground as stated in the bill that the ordinance operated to impair the obligations of contracts

between them and the City, and to deprive complainants of their property without due process of law and to withhold from them the equal protection of the laws, and was hence unconstitutional as in conflict with Section 10, of Article I of the United States Constitution, and Article XIV of the Amendments. (Print. Rec., p. 18).

The bill alleges that said ordinance 21,087 does not call for "a license fee but is an additional unequal charge and compensation assumed to be and is arbitrarily exacted from this complainant as a consideration for rights and franchises already granted to it by contracts with the City of St. Louis and paid for by complainant in accordance with the provisions of said contracts." (Print. Rec., p. 17.)

The bill of complaint sets out with particularity all the various constitutional and charter provisions involved, with the conspicuous exception of the one vital provision in pursuance of which the said ordinance 21,087 was really enacted, namely, the charter right "to license, tax and regulate street cars," which the bill entirely ignores.

The answer sets forth the various defenses to the allegations of the bill, and specifically declares the right of the City to enact the said ordinance 21,087 as a license tax under charter provisions in the answer set up (and hereinbelow given in full), and denies that the special franchise or right-of-way ordinances pleaded as contracts in the bill, can be construed as exercising or surrendering the right of the City to impose the license tax provision in ordinance 21,087.

To be a little more specific, the answer, after setting forth what parts of the bill of complaint are denied and what admitted, and after setting out certain constitutional and char-

ter provisions (amongst them in par. 6 the right to amend, alter or repeal a grant in whole or in part) then goes on in paragraphs 7, 8, 9 and 10 of said answer to state specific defenses, which, since they may be taken as indicative of the main position of the defendant city, we may be pardoned in quoting, as follows: (Print. Rec., pp. 47-51):

> (7) And defendant states that having exclusive and plenary power under the Constitution, statutes, charter provisions and laws of the State to grant or withhold its consent to the complainant and its assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did, when complainants desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainants' bill and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainant and its assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise or right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a license fee for the exercise of such right so conferred on the aforesaid conditions, nor to require payment of a general property tax on complainants' property.

(8) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainant's bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its charter Article III, Section 26, clause 5th, by ordinance, to license, tax and regulate street railroad cars (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21,087, approved March 25, 1903 (being the same the enforcement of which complainant seeks to enjoin), which is as follows, to-wit:

(21,087)

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the 'Municipal Code of St. Louis' by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

[Here follow the provisions of ordinance 21,087 which have been hereinabove set out in full, so the same is omitted here.]

(9) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privilege conferred upon the complainant or any of its assignors; that the obligations assumed by complainant and its assignors in the respective ordinances conferring franchises, rights and privileges were in no sense license fees or license taxes upon street cars, but only conditions under which the city consented that said complainant and their assignors could obtain the valuable right to the use of its streets, and in no way operated to exempt complainant from the imposition of license taxes and fees for the exercise of their business and the rights conferred by said franchises. On the contrary defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25 each year on each street car operated by any street car company and which license fee and tax complainant had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said company upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And defendant further states that when said complainant accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned, and, that it at all other times, and all the assignors of said company, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21,087.

And defendant specially denies that the amount required to be paid is as alleged by complainant "absolutely required for the purpose of making extensions and procuring additional equipments essential to the

proper conduct of the service assumed by it and to the proper discharge of the obligations imposed upon it by the several special ordinances" by it set forth or cast a cloud on the title of the properties of complainant, which impairs its credit.

Defendant states that said license fee or tax is perfectly lawful and reasonable, and does not interfere with the conduct of complainant's business, but that if complainant is unable or indisposed to continue its said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790a of ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of its said franchises and chartered rights, which action complainant has declined to adopt, but on the contrary in open violation of said ordinance 21087, operates street cars and engages in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10). Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies equally with complainant, and that it agreed on June 16, 1898, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinances 19392 and 19393 referred to in said complainant's bill, and without which the same would not have become effective, to accept all obligations therein imposed on said complainant, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways; and said respective assignors of complainant entered into similar agreements as a condition permitting them to assign such rights or franchises to complainant, wherein said assignors and each of them

agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

[In the record as printed, some of the phrases appear in italics; but this is from a cause unknown to this defendant, as in the answer as filed there were no italics used, and the same should be read as if there were none.]

The replication amounts to a general denial of new matter.

The contention of the railway companies, as we understand it, is not that the City of St. Louis had no right to enact this general ordinance in question. It is that the same cannot be made applicable to them because, in the special ordinances (by which the City enfranchised complainant and its assignors, whose rights, privileges and franchises the latter has acquired) the City imposed certain obligations and conditions, amongst which were the payments of certain sums, the repair of streets between rails, etc. (hereinbelow more fully stated), which it is claimed were themselves an exercise by the City as against appellees of its power to impose license-taxes, and therefore operated as contracts which exhausted the right to impose any further license taxes for the operation of the cars.

The main contention of the City of St. Louis, as set forth in its answer, is, on the other hand, that all of these considerations and payments called for in the special or franchise ordinances to the companies were merely the contract price of obtaining the consent of the City required by the Constitution of the State, and Charter of the City, and were in no sense license taxes, and did not affect the power of the City to enact a license tax on each car.

The provision of the Missouri Constitution referred to in the answer, is Article XII, Section 20 (Print. Rec., p. 46).

> "No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

The provision of the City Charter under which ordinance 21087 (and the former ordinance which it amended, which provided for a license tax of $25.00 per annum on each car) was enacted, is found in Article III, Section 26, Clause 5. This clause confers authority on the City "to license, tax and regulate" many kinds of business and vocations, and a multitude of different kinds of vehicles, conveyances, etc., all specifically enumerated, amongst which appear "street railroad *cars*."

Under the Missouri Constitution the courts are required to take judicial notice of the Charter of St. Louis City. Const. 1875, Art. IX, sec. 21.

This clause of the charter above designated in full is as follows (Charter, Article III, Section 26, Clause 5):

> "Fifth.—TO LICENSE, TAX AND REGULATE VARIOUS KINDS OF BUSINESSES, ETC.; FIX RATES FOR CARRIAGES, DRAYAGE, ETC.; REGULATE WIDTH OF TIRES—TO SUPPRESS CERTAIN OCCUPATIONS AND AMUSEMENTS.—To license, tax and regulate lawyers, doctors, doctresses, undertakers, dentists, auctioneers, grocers, merchants, retailers, hotels, boarding houses, tenement houses, office buildings, public buildings, public halls, public grounds, concerts, photographists,

artists, agents, porters, runners, drummers, public lectures, public meetings and shows, real estate agents and brokers, financial agents and brokers, horse and cattle dealers, patent-right dealers, inspectors and gaugers, stock yard proprietors, examiners of titles, conveyancers, mercantile agents, insurance companies and insurance agents, bankers, banking or other corporations or institutions, telegraph companies or corporations, *street railroad cars,* livery and sale stables, hackney carriages, private carriages, barouches, buggies, wagons, omnibuses, carts, drays and other vehicles, and all other business, trades, avocations or professions whatever; to fix the rate for carriage of persons, and of wagonage, drayage and cartage or property, and regulate the width of the tires of all vehicles for heavy transportation; to license, regulate, tax or suppress ordinaries, hawkers, peddlers, brokers, pawnbrokers, money changers, intelligence offices, public masquerade balls, street exhibitions, dance houses, fortune tellers, pistol galleries, lottery ticket dealers, corn doctors; lock, private and venereal hospitals, museums and menageries, equestrian performances, horoscopic views, lung testers, muscle developers, magnifying glasses, billiard tables or any other tables or instruments used for amusement; circuses, operatic, theatrical and other exhibitions; shows and amusements, saloons, beer houses, tippling houses, dram shops, and gift enterprises; and to suppress prize fights, coon fighting, dog fights, chicken cock fights, gaming or gambling houses; and to suppress bawdy and disorderly houses, houses of ill-fame and of assignation; to provide for and enforce the registration of all births, marriages or deaths; to license, tax, regulate or suppress all occupations, professions and trades not hereinbefore enumerated, of whatever name and character."

The provisions of the City Charter, under which the numerous special or contract ordinances were enacted which

conferred authority upon the various street-car lines assigned to and acquired by appellees, are found in Article X, Section 1-5 of the Charter, and are as follows:

"Section 1. AUTHORITY OF MUNICIPAL ASSEMBLY IN REFERENCE TO STREET RAILROADS—MAY SELL FRANCHISES OR IMPOSE A PER CAPITA TAX OR A TAX ON GROSS RECEIPTS.—The Municipal Assembly shall have power by ordinance to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right of way, or regulating and controlling them after their completion; and also shall have power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a per capita tax on the passengers transported, or an annual tax on the gross receipts of such railroad, or on each car, and no street railroad shall hereafter be incorporated or built in the City of St. Louis except according to the above and other conditions of this Charter, and in such manner and to such extent as may be provided by ordinance.

Sec. 2. MAY REGULATE RUNNING OF CARS AND RATES OF FARE AND TAX PROPERTY.—The Assembly shall have power to regulate the time and manner of running cars, and the rates of fares on street railroads now or hereafter to be built, and the sale of tickets and exchange therefor between the several companies and to tax the property of street railroad companies in such manner as may be provided by law.

Sec. 3. SURRENDER OF FRANCHISES, HOW EFFECTED.—Any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indisposition, and surrender thereby all their chartered rights or franchises, in such manner

and under such terms and conditions as may be provided by ordinance.

Sec. 5. COMPANIES TO KEEP STREET BETWEEN RAILS IN REPAIR.—Street railroad companies shall keep the street between the rails, and to the extent of twelve inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails shall be of the same material as the street itself, and the Municipal Assembly shall provide by ordinance that bond or other security shall be given by the several companies, conditioned for a compliance with the provision of this section."

And in this connection we may refer to the Charter, Article III, Section 26, Clause 11, which confers general power on the city:

"Eleventh.—TO PROTECT RIGHTS OF CITY IN CORPORATIONS—GRANT, REGULATE AND REPEAL RAILWAY FRANCHISES—FREE PASSES ON STREET RAILWAYS PROHIBITED.—To take all needful steps in and out of the State, to protect the rights of the city, in any corporation in which the city may have acquired an interest; to have sole power and authority to grant to persons or corporations the right to construct railways in the city, *subject to the right to amend, alter or repeal any such grant in whole or in part,* and to regulate and control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles; but every right so granted shall cease, unless the work of construction shall be begun within one year from the granting of the right, and be continued to completion with all reasonable practical speed, and it shall be the cause of forfeiture of the rights and privileges derived from the city, of any railroad company operating its road only within this city, which shall allow any person to ride or travel on its road gratuitously or for less than usual price of

fare, unless such person be an officer or employe of such company."

The numerous special or right-of-way ordinances by which the respective independent street railway companies (which were subsequently consolidated or merged into the complainant) were originally authorized to operate in the City of St. Louis, are set out in full in the record (Print. Rec., pp. 78, *et seq.*).

These are the ordinances which the appellee claims to contain the clauses which are alleged to be an exercise of the City's charter power to license and tax street cars, and that hence that power was thereby exhausted as to appellee so that when subsequently ordinance 21,087, imposing a license-tax, was enacted, it is alleged to operate as an impairment of the contract-ordinances; or, differently stated, that the appellee claims to be exempted from the operation of ordinance 21,087, because of the terms of said special ordinances relating to complainant and the respective assignor companies.

It is therefore essential, for a proper understanding of this cause, to set out such provisions of these numerous ordinances as may bear on this contention.

The granting part of the said franchises or rights-of-way conferred thereby is in nearly all instances, substantially or literally, to the respective company in question "to operate, maintain and construct" or "to lay down, construct, operate and maintain" or "to reconstruct its tracks and maintain and operate its railway thereon," etc., over certain designated streets. These franchise privileges are conferred upon certain conditions and burdens imposed in these ordinances, the compliance with which complainant says exempts it from paying license-taxes, but which the ordinances say are assumed by complainant (or its respective assignors) as a

consideration for the franchise rights conferred. These burdens consist of payments of certain fixed sums payable each year, and also the repair of the streets within the tracks, limit of fare to be charged, and similar conditions herein below specifically set out.

An examination of these ordinances shows that such burdens (particularly payment of fixed amounts to the City per annum or percentage of receipts) are expressed to be assumed by the grantees *"in consideration of the rights, privileges and franchises hereby granted,"* or "rights and franchises granted in this ordinance" (or similar words), etc. Such is the language in the ordinances, set out in the bill and printed record.

The said burdens "in consideration" of which the franchises were conferred, are to the effect that "the said company shall pay to the City of St. Louis," certain sums, which are in this case generally a fixed amount per annum (in most instances increasing per year as the franchise ages), or in one or two instances a certain percentage of gross receipts; such (either one or the other) is the case in the following ordinances, to-wit:

Ord. 17,008, sec. 6, print. rec. p. 22 (Manch. Elec. Rd).
Ord. 17,375, sec. 6, print. rec. pp. 24, 25 (same).
Ord. 18,231, sec. 9, print. rec. p. 31 (same).
Ord. 19,392, sec. 10, p. 39 (Complainant's road).

The above particularly are the clauses calling for the payments claimed to be in lieu of, or as exempting from, the license tax in question, and are the provisions relied upon by complainants, and special attention is directed thereto.

In some of these ordinances above specified there appear

further conditions, for instance, that such payments are to be "in addition to all other taxes, or license fees hereafter prescribed by law, *or ordinance.*" So in:

Ord. 17,375, sec. 6, p. 25 (Manch. Elec).
Ord. 19,350, sec. 7, p. 35 (Complainant).

Other, though less important, of the burdens imposed, are that the companies keep the space between the rails and 12 or 18 inches on each side, paved and repaired. We believe every one of the ordinances (or nearly so) contains this provision.

And in others that the fare charged be not in excess of a certain sum, usually five cents. So in these ordinances:

Ord. 17,008, sec. 3, print. rec. p. 21 (Manch. Elec).
Ord. 17,375, sec. 2, print. rec. p. 24 (same).
Ord. 18,231, sec. 5, print. rec. p. 30 (same).
Ord. 19,392, sec. 5, print. rec. p. 37 (Complainant).

And the complainant and its assignors have expressly agreed "in accepting this ordinance to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force or which may hereafter be enacted," etc. So in ordinances:

Ord. 19,392, sec. 13, print. rec. p. 39 (Complainant).
Ord. 17,008, sec. 7, print. rec. p. 22 (Manch. Elec.).
Ord. 17,375, sec. 7, print. rec. pp. 25-26 (same).
Ord. 18,231, sec. 9, print. rec. p. 31 (same).
Ord. 19,350, sec. 5, print. rec. p. 34 (Complainant).

The usual penalty for failure to observe any of these conditions and terms is that the same shall "cause the forfeiture of all the rights, privileges and franchises granted," etc.

There is some verbal evidence in the record, but the same is not only of a nature which is so incompetent and immaterial as to make it worthless, but on reading the same it will be found to relate exclusively to the St. Louis & Suburban Road, and is inapplicable to this case.

The Court below construed these special or right-of-way ordinances as being in themselves an exercise of the taxing power (given in clause 5, sec. 23, Art. III, of the City Charter), and that the conditions therein as above set forth were in fact a license tax, and being contracts, upon acceptance of the companies, could not be added to by another license tax, and hence held ordinance 21,087 to be void as against the complainants. (See Opinions, print. rec. 107.)

Being dissatisfied with the correctness of this decision, for the reasons as indicated in the assignment of errors next herein set out, the City of St. Louis appeals to this Court for a reversal of the decree and asks for the dismisal of the bill.

ASSIGNMENT OF ERRORS.

The formal assignment of errors filed and presented by the appellant City of St. Louis (omitting caption, etc.), is as follows (print. rec., pp. 104-105), to-wit:

Comes now the City of St. Louis, defendant in the above entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons:

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21,087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis impaired the obligations of any of the special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to con-

struct, operate and maintain street railways in said City, precluded the defendant, the City of St. Louis, from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis, by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction, maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21,087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license-tax by virtue of the special franchise ordinances granting it, or its assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant, The City of St. Louis, prays that the decree of the Circuit Court be reversed, and that said Court be directed to enter a decree in favor of said defendant.

SPECIFICATIONS OF ERROR.

As indicated in the above formal assignment of errors, appellants contend that the lower court erred in these respects:

(1) It misconstrued the special, or franchise, ordinances or rights-of-way (under which complainants and their predecessors in title, which form the constituent lines of complainants, derived their authority from the city) in construing the same as being in themselves an exercise of the city's right to impose a license tax on street cars under the Charter Article III, clause 5 of section 26, instead of merely terms and conditions for the grant, under the Charter Article X and the State Constitution Article XII, section 20.

(2) In holding the city had, in said special ordinances, contracted away, or attempted to contract away, its power to levy a license tax on street cars.

(3) In holding that if it had so attempted, that it could legally exempt complainants from license taxation in that manner.

(4) In holding that ordinance 21,087 was void because to recognize the city's right to enact it would enable the city to abuse such power, although there was no such abuse shown or decided to exist in the case before the court; in other words, in annulling the city's *power* to tax cars because it *might* abuse the same.

(5) After erroneously holding the conditions of said ordinances to be equivalent to providing for license taxes, in further erroneously holding that, regarded as license taxes, the city could not alter, amend or repeal the same.

(6) In holding that the city could not and did not exact the conditions and terms pleaded in the special or franchise ordinances without trenching upon or exhausting its taxing power.

(7) In holding that the city could contract away its taxing power at all.

(8) In holding that even if it could and did exempt the assignors of complainants, that such immunity passed to the latter.

POINTS AND AUTHORITIES.

I.

General Power to Enact a License Tax on Cars.

It must be conceded that under the Charter of the City of St. Louis (derived from the Constitution itself: Const. Missouri, Art. IX, Secs. 20-25), that City had the broad and specific power, in general, to enact ordinance 21,087 (set out Print. Rec., p. 99) imposing a license tax on all street railway cars operated within its limits, as well as to enact the prior ordinance thereby replaced, which had fixed the amount at $25.00 per car, per annum. The power to tax as well as to license is conferred in express terms.

Charter of St. Louis, Art. III, Sec. 26, clause 5, conferring power to license, tax and regulate street railway cars.

Springfield vs. Smith, 138 Missouri 645, 654, *et seq.*

Kansas City vs. Corrigan, 18 Missouri Appeals, 206.

27 Am. & Eng. Enc. Law (2d Ed.), "Street Railways," p. 52.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365.

See further on the general power of cities to impose license taxes in Missouri:

St. Louis vs. Weitzel, 130 Missouri 600, 619-620.

Aurora vs. McGannon, 138 Missouri 38, 45.

St. Louis vs. Green, 7 Missouri Appeals, 468, 474. 478, affirmed on this point in 70 Missouri 562.

See also, cases *infra* cited in Point II, Sub. (*c*).

Obviously the fact that a portion of the route of the company goes beyond the city limits can make no difference.

San Jose vs. S. J. Ry., 53 California, 475.
Newport News Ry. vs. Newport News, 100 Virginia, 157.
Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365.

In fact, if there were no authority in the State (acting here through its delegated agent, the City) for the imposition of this tax, the foundation of this Court's jurisdiction would be gone, and the bill would have to be dismissed on that ground.

Savannah, etc., Ry. vs. Savannah, 198 U. S., loc. cit. 396.

It follows that since such license tax ordinance as a general proposition is valid, the appellees are required to pay the same upon their cars, unless they can show affirmatively some valid legal reason why they are excepted from its application. This they seek to do by the claim (1) that the right-of-way or special ordinances conferring upon them and their assignors or predecessors in title the city's consent, of themselves impose such license-tax, which cannot hence be increased or altered by ordinance 21,087 without their consent; or (2) that said right-of-way ordinances should be construed as exempting appellees from all license taxes.

These are ultimately the only two points involved in this case.

II.

An examination of the numerous franchise or right-of-way ordinances to the predecessors of appellees demonstrates that the conditions therein recited "in consideration" of which the grants were made, are conditions annexed under Article X of the City Charter, and assumed by the street car companies in order to obtain the City's initial consent, necessary under the State Constitution, and cannot be construed as an exercise of the power conferred in the City Charter in Article III, Section 26, Clause 5, to tax street cars, nor as an exemption from such taxes.

(a)

There can be no question as to the right or propriety of the City to impose just such terms and conditions before giving its consent as it chose to impose in the said right-of-way ordinances, to-wit: payment of certain fixed stipulated sums or percentage of gross receipts, increasing as the franchise ages, paving and repair of space between the rails, rate of fare, time for completion of work, etc.; all of such provisions stand upon the same basis as to the City's power, but vary in particularity with each respective ordinance.

Whilst it is true in one sense that all Missouri corporations, including street railways, derive their franchises or right to exist originally from the State, acting through the General Assembly under general law, yet the rights-of-way conferred by the City upon street railroads are in effect equivalent to franchises, because unlike other corporations, under the Constitution, no street railroad can be granted the right "to construct and operate a street railroad within any city, town, village, or on any public highway without first

acquiring the consent of the local authorities, nor can the franchise so granted be transferred without similar assent."

> Constitution of Missouri of 1875, Art. XII, Sec. 20 (Print. Rec., p. 46). Note that in both the Constitution and Charter, an ordinance conferring the City's consent is termed a "franchise."
>
> See also as to such power being equivalent to a franchise:
>
> Blair vs. Chicago, 201 U. S. 400, loc. cit., 457-460;
> State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 190.

And the Charter of St. Louis also expressly provides that in granting the right-of-way or franchise to a street railway the City "as a consideration therefor, may impose a per capita tax on passengers transported *or an annual tax on gross receipts,*" etc.

> Charter of St. Louis, Art. X, Sec. 1.

Now these provisions of Art. X of the Charter are the very terms exercised in the contract ordinances or rights-of-way ordinances (set out Print. Rec., 78 to 95, a synopsis of which is given in our statement *ante*, pp. 19-21), which appellees rely on. And this Art. X of the Charter plainly refers to conditions to be annexed to the City's consent (as required by Art. XII, Sec. 20, of the Constitution, *supra*) to a street railway franchise, and these conditions when enacted in the franchise-ordinances and accepted by the companies are the price of such consent, *and are limited to that.*

But this Art. X of the Charter and such conditions annexed to obtaining a franchise thereunder and under the

Constitution, is wholly independent of the power to impose a *license tax on street cars* given under clause 5, of sec. 26, of Art. III of the Charter, *supra.*

This distinction goes to the core of the case.

If observed, it follows that the consent conditions to a franchise can not operate as a license-tax on cars.

(*b*)

Under the Constitutional and Charter provisions above cited, the power given to the City is not limited to a mere "yes" or "no" in granting the right-of-way or franchise ordinances, but it may impose such conditions upon its consent as it sees fit.

St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, loc. cit. 252-253.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 457-460.
Allegheny City vs. Street Railway, 159 Pa. St. 411.
27 Am. & Eng. Enc. L. (2nd Ed.) "Street Railways," pp. 21-22.

See also:
Ashley vs. Ryan, 153 U. S. 436, loc. cit. 441-445.

(*c*)

It is therefore obvious that these "considerations" are but the bonus or price paid to the City for its consent to place the street railway companies upon the same plane to do business that other corporations have without any such consent. So far the ordinances are contractual and once accepted are binding as contracts.

But this has nothing to do with the further power of the

City to impose a license-tax on street cars, as on any other conveyance using the streets, which power is not contractual, and exists by virtue of a totally different clause of the Charter. There may be a license, and a tax on the license.

One power is to contract, the other is to tax. The lower court ignored this distinction, or rather held that there was none such. While burdens agreed upon in such right-of-way ordinances are sometimes erroneously or inaccurately called a "tax," in the sense of being a burden, they are in law not included under provisions relating to either general taxes or license taxes.

Metropol. Street Ry. vs. N. Y., 199 U. S. loc. cit. 44-45, 46.

Brooklyn City Ry. vs. N. Y., 199 U. S. 48, loc. cit. 50.

Mayor, etc., vs. Broadway Ry., 97 N. Y. 275, 283-284.

Newport, etc., Railway vs. Newport, 100 Virginia 157, loc. cit. 162.

City of Newport vs. Street Ry., 89 Ky. 29.

It has therefore been uniformly held that such contractual obligations as are in question in this case, assumed by street railway companies in obtaining municipal right-of-way ordinances or franchises "to operate, construct and maintain" street railways, under provisions practically like those here in issue, are never construed as exempting or relieving the street car companies from the imposition of license taxes by duly enacted ordinance of such municipality, even if not imposed until after the acceptance of the companies' franchise ordinances.

There is not a word in any of the ordinances relied upon

by appellees that hints at a surrender by the City of its power to tax street-cars, or to exempt them from such tax, or grant an immunity therefrom.

In construing the ordinance of a City conferring upon a street railway company the authority to construct and operate a street railway, the right of the City to exact license ~~fees~~ will not be denied unless such right has been expressly surrendered in the ordinance. Such grants are construed strictly against the corporation companies, and liberally in favor of the public; silence is negation, and doubt is fatal to the claim. There is no such surrender by a grant to operate, construct and maintain a street railway, though given upon compliance with certain conditions and payments. And when the contract ordinance between the City and the company does not in terms dispense with the payment of a license tax, the rights of a company are not impaired by a subsequent ordinance requiring such payment.

Springfield vs. Smith, 138 Missouri, 645, 655.
Wyandotte vs. Corrigan, 35 Kansas, 21.
New Orleans City Ry. vs. New Orleans, 143 U. S. 192.
Railway Co. vs. Philadelphia, 101 U. S., 528.
Met. Street Ry. Co. vs. New York, 199 U. S. 1, loc. cit. 37.
Savannah Ry. vs. Savannah, 198 U. S., 392, 398.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 471-473.
State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 194.
Newport, etc., Ry. vs. Newport, 100 Virginia, 157.
New Orleans vs. Orleans Ry. Co., 42 La. An. 4.
New Orleans vs. New Orleans Ry. Co., 40 La. An. 587.

San Jose vs. S. J. Railway, 53 Cal. 475, 481.
State vs. Herod, 29 Iowa, 123.

See also:

Rochester Ry. vs. Rochester, 205 U. S. 236, 248.
Cleveland Electric Ry. vs. Cleveland, 204 U. S. 116, 130.

If the companies wished or intended to have an exemption of any kind from taxation, or felt it was necessary for the profitable working of their business, they should have required a provision to that effect in their charters.

Memphis Gas Co. vs. Shelby, 109 U. S. 398, followed in New Orleans Ry. vs. New Orleans, 143 U. S. loc. cit., 195, Metropolitan Street Ry. vs. New York Tax Comrs., 199 U. S. loc. cit. 42, and other cases.
Newport, etc., Ry. vs. Newport, 100 Virginia loc. cit. 163.

See also cases, *supra*:

(*d*)

If there were doubt as to whether the special or franchise ordinances here in question should be construed to exempt or relieve the railway companies from payment of the general license tax, such doubt would be removed by the interpretations placed thereon by the companies themselves, which have always recognized the obligation to pay a license tax independently of the contract-ordinances, and which paid the general license-tax fee of $25.00 per car, and continued so to do until the amendment of that general ordi-

nance by ordinance 21,087 in 1903. Obviously if the latter was an attempted impairment of the obligations of the City under the contract ordinances, so was the $25.00 tax ordinance. The amendment did not change the nature of the payment required, but merely the amount and method (which latter are matters not before the Court at this time). If the claim now made, that the special payments under the contract-ordinances worked immunity from a license-tax were correct, it was just as much so when the license-tax was fixed at $25.00 per car, which, however, the companies all paid. If the present ordinance of 1903 is void, so was the amended one, yet the validity of the latter is admitted by the annual payments made for half a century thereunder by the predecessors or assignors of complainants, and indeed, by the latter themselves for years, since their organization.

It is a well-established rule (applicable in favor of a municipality as in any other case) that in case of ambiguity in the language, the contemporaneous interpretation placed upon a contract (though it be an ordinance-contract with a City) by the parties themselves, is entitled to great if not controlling influence, especially if continued over a long period of time.

St. Louis Gaslight Co. vs. St. Louis, 46 Missouri, 121, 127 *et seq.*
St. Louis vs. Laclede Gas Light Co., 155 Missouri, 1 l. c., 19.
Dist. of Col. vs. Gallagher, 124 U. S. 505.
Insurance Co. vs. Dutcher, 95 U. S. loc. cit. 273.
Topliff vs. Topliff, 122 U. S. 121, loc. cit. 131.

(*e*)

Nor is it to be overlooked as corroborative of the plain

construction contended for by the City, that while on the one hand there is not an intimation upon which appellee can put its fingers, in any one of the numerous franchise ordinances, which expressly or impliedly *surrenders* the right of the City to tax street cars, yet there are distinct assertions which slipped into some of these ordinances which show the thought that the right to impose license taxes is not involved in them, and which require the fixed payments (claimed by appellees to be of themselves, or to exempt them from license taxes) to be paid, in addition to license fees now or hereafter prescribed by law *or ordinance*. Such provisions are directly contradictory of the contention here urged by the railways as any reference to general ordinances requiring such payments must be to those imposing license-taxes; these provisions are hence significant of the light in which such payments assumed in the consent ordinances are regarded, to-wit, as in no way being of themselves license taxes, otherwise they would not be expressed as paid apart therefrom, or in addition thereto.

(See ordinances enumerated in our Statement, *ante*, pp. 20-21).

(*f*)

Again, the complainants have no standing here because *they have agreed to pay this very tax in issue in the contract-ordinances.*

The complainant and its predecessor have all in the consent-ordinances or franchise from the City expressly agreed to "comply with the provisions of all general ordinances and charter provisions affecting street railways that may now be in force or which may be hereafter enacted," etc.. (See the different ordinances so providing, which are enumerated and designated in appellants' Statement, *ante*, page

21, to-wit, Ord. 19,392, sec. 13, print. rec. p. 39; Ord. 17,008, sec. 7, print. rec., p. 22; Ord. 17,375, sec. 7, print. rec., 25-26; Ord. 18,231, sec. 9, print. rec., p. 31, and Ord. 19,350, sec. 5, p. 34.)

There *was* such a general license-tax ordinance then in force; and the present one is such a general ordinance, amending the former.

These provisions above quoted from the franchise ordinances of themselves amount to a contractual acceptance of the general ordinance in force when all of these contract-ordinances were enacted and accepted, imposing a license-tax of $25.00 per car, and also are an executory acceptance of the subsequent general one mill ordinance here in issue, amending said prior ordinance.

And this is true, even if in the absence of such agreement incorporating them by reference the said license-tax ordinances would be inapplicable to such companies because operating as an impairment of contract; and in fact even if they were wholly void (which of course is not the case, being here clearly within the City's general power).

Interstate Consolidated Street Ry. vs. Massachusetts, 207 U. S., 79.

III.

If the City had attempted to barter away its power to impose the license-tax in question, in the contract-ordinances conferring its consent, as claimed by appellees, such action would have been void as contrary to law, for either of several reasons.

As shown above in point II, we think that a construction of the right-of-way ordinances upon proper legal principles, will exclude the possibility of appellees being correct that they were intended to be relieved from payment of license-taxes on cars, and we think it will not be necessary to go further. But, for the sake of the argument only, we contend that if the railways were right in that contention, it would not avail them, for such attempted exemption would be void, whether (1) the City attempted expressly to exempt the railway companies, or (2) impliedly imposed a license-tax by providing for the percentage payments to be taken in lieu of such tax, which really amounts to the same thing.

(*a*) The City cannot bind its hands not to tax, or to exempt from taxes.

The sovereign State perhaps has the power to enact a binding contractual exemption from taxation, were it not prohibited by its constitution, which, however, it is in Missouri: Const. 1875, Art. X, secs. 2, 6 and 7. The City of St. Louis is specially authorized by the Constitution to provide in its charter for levying taxes for municipal purposes, in such manner as is not inconsistent with the constitution and laws. (Const. Art. IX, sec. 21; St. Louis vs. Bircher, 76 Mo. 431; St. Louis vs. Sternberg, 69 Mo., 289, 298.)

But taxation (without which power the municipality ceases to exist) is an attribute of sovereignty that the legislature of this State has not, in fact, cannot, authorize a municipality to contract away, any more than the police power. The legislature cannot delegate a power denied to itself by the Constitution. A contract by a city, attempting it, is to that extent simply ultra vires and void.

Springfield vs. Smith, 138 Missouri, 645 (applying that rule to a street car tax exemption).
State vs. Railroad, 75 Missouri, 208.
Savannah, Thunderbolt, etc., Ry. Co. vs. Savannah, 198 U. S., 392.
People ex rel. Street Ry. vs. Tax Com'r., 174 N. Y. 417, loc. cit. 448, affirmed in 199 U. S. 1.

That a license fee for revenue *is a tax* is settled in Missouri:

St. Louis vs. Spiegel, 75 Missouri, 145.
St. Louis vs. Spiegel, 90 Missouri, 587, loc. cit. 591.

See also:
Springfield vs. Smith, *supra.*

(*b*) If the argument were sound (which it is not) that the City had exercised and exhausted its license-taxing power in imposing the conditions of percentage payments on gross receipts, or certain fixed sums, which should be regarded as annual license-taxes on cars, such an attempt by the City would be void for the additional reason that there would be no uniformity in such a tax, but a different, special and invidiously discriminating license-tax for each and every of the many independent constituent lines of the United Railways Company as assignee, and through which it holds. The City would have no power arbitrarily to charge one company or individual one price by way of a license, and another in the same business another price. The tax must be uniform upon all within the same class. (Const. Missouri, Art. X, sec. 3; print. rec., p. 13.) Such a tax must be by general law, substantially uniform in its operation throughout the City, and not by specific, unequal, special,

single and dissociated provisions applicable to different individual cases. If so it would be void.

Kansas City vs. Corrigan, 18 Missouri Appeals, 206, 215.
St. Louis vs. Spiegel, 90 Missouri, 587.
St. Louis vs. Spiegel, 75 Missouri, 145.
Aurora vs. McGannon, 138 Missouri, 38, 48.
Railway Co. vs. Philadelphia, 101 U. S., l. c., 537.
See also below under point VI, subdivision (b).

We do not claim it is void, but only that such an absurd result would follow if complainants' contention were sound. No construction, involving such results, will be sustained.

But even if void, then, since these are the conditions under which the railways are authorized to do business at all, it follows they would have no authority to operate whatever, and hence have no standing in court. An essential condition being void, the whole ordinance would be void.

So held in St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, l. c. 253.
See also Allegheny City vs. Ry., 159 Pa. St. 411, loc. cit. 418-419.

IV.

The immunity from taxation burdens would not pass to complainants.

Moreover, such an exemption (if created) even when the main grant is of rights, privileges and franchises to the grantee and its successors and assigns will not pass with an assignment or transfer to the assignee or transferee.

Rochester Ry. vs. Rochester, 205 U. S. 236, collating the authorities.

Phoenix Ins. Co. vs. Tennessee, 161 U. S. 174, 180, *et seq.*

Keokuk Ry. vs. Missouri, 152 U. S. 301, 307, *et seq.*

Railroad vs. Georgia, 98 U. S. 359.

Turnpike Co. vs. Sanford, 164 U. S. 578, 586, *et seq.*

Railroad vs. Pendleton, 156 U. S. 667, 673.

V.

The right to alter, amend or repeal.

(*a*) Again, even if the argument were sound (which of course it is not) that the recited considerations for the right-of-way franchises were to be treated as if they were license taxes, or operated to exempt from the City's charter power to tax street cars, then treating such provisions as license-tax burdens, the rights conferred would still in that respect be subject to the further provision in the contract-ordinance enfranchising this complainant that "The City of St. Louis reserves the power to alter, amend, or repeal this ordinance at any time;" and also to the charter provision (in force at the times and since these franchise ordinances were enacted) that every such grant is taken "subject to the right to amend, alter or repeal any such grant in whole or in part."

Ord. 19,350, sec. 8, print. rec., p. 35.

Charter of St. Louis, Art. III, sec. 26, clause 11 (print. rec., p. 42). That this clause applies to street railways is obvious (and is so recognized in State ex inf. vs. Lindell Ry., 151 Mo. loc. cit. 181, where it is cited in discussing the street railway laws of St. Louis).

Conceding for the argument that the franchises of these companies amount to a contract of exemption, yet since at the time of the adoption thereof there existed the paramount power to repeal, alter or amend, the alleged exemption or relief from future license-taxes may be revoked without impairing the obligations of the contract, because the paramount reserve power, which is treated as if embodied in the contract, deprives the contract of its irrevocable character, at least with respect to such provisions as relief from license-taxation.

Railway Co. vs. Philadelphia, 101 U. S. 528, loc. cit. 540.

Fair Haven R. R. Co. vs. New Haven, 203 U. S. 379, loc. cit. 388-389.

San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 308.

Interstate Consol. Street Ry. vs. Massachusetts, 207 U. S. 79.

State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.

Citizens' Bank vs. Owensboro, 173 U. S. 639, loc. cit. 644.

Street Railway Co. vs. Sioux City, 138 U. S. 93, loc. cit. 108.

Railroad vs. Georgia, 98 U. S. loc. cit. 365.

(*b*) A further important consideration is that at all times when any of the right-of-way ordinances were enacted which provide for the payments claimed to operate as immunity from the street car license-tax, the general ordinance existed, formed part of the charter of the railroads, and was in fact complied with, fixing a tax of $25.00 per annum on each car; and the City certainly had the right to amend such general ordinance by changing the amount, under its

power to alter, amend or repeal any grant in whole or in part, even if it had not power to so do otherwise.

State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.
Fair Haven Ry. vs. New Haven, 203 U. S. 379, 388-389.
Stanislaus Co. vs. San Joachin Co., 192 U. S. 201, and cases there cited.

VI.

The Ordinance is Uniform.

(*a*) There is no merit in the contention that the ordinance denies complainants the equal protection of the law on the ground that it discriminates between street railroads and other public conveyances such as steam roads, automobiles, hacks, etc.

When a city having power to tax vehicles, trades, callings, etc., taxes alike all persons engaged in such business, such taxation is equal and uniform. Street railroads may be put in a class by themselves.

Metropolitan Street Railway vs. New York, 199 U. S. 1, 47.
Savannah Ry. vs. Savannah, 198 U. S. 392.
Aurora vs. McGannon, 138 Missouri, 38, 48.
St. Louis vs. Bowler, 94 Missouri, 630, 634.
Newport Ry. vs. Newport, 100 Virginia, 157, 161.
Armour Packing Co. vs. Lacy, 200 U. S. 226, 235.

(*b*) Neither is there anything objectionable in the form of this ordinance fixing the amount of the tax according to a graduated scale, instead of a fixed sum.

This phase is considered below under point VIII, where high authorities sustaining such form are cited.

(*c*) But while there is nothing in the argument that Ord. 21,087, wholly general in its provisions, is not uniform, the mere fact that such an argument is made accentuates and emphasizes how absurd it would be to regard each and every of the individual special or contract ordinances conferring the municipal franchises on complainants' assignors as license-tax provisions. See on this point *ante* under point III, sub-division (b).

VII.

The ordinance is not oppressive, unreasonable, or confiscatory. Neither can it be attacked in this case on that ground.

(*a*) The ordinance is certainly reasonable and fair on its face. There is no evidence worthy of consideration that it is oppressive, confiscatory or unreasonable.

The State, acting through its delegated agent, the City, has a right to impose a license-tax on street cars for the use of the streets, and burdening them with rails, etc., thereby requiring the street car companies (like others) to contribute to meet the burden of the City's government, in which they so largely share. A tax of one mill per day passenger is certainly not excessive in a metropolis of nearly three-quarters of a million people. If the car carries few passengers or remains largely unused, the tax is proportionally less; if jammed with passengers, then more—as it ought. As seen by the citations in point VIII, a tax graduated according to the earning power of the subject thereof, is to be recommended as an equitable adjustment.

(*b*) We fail to see any cogency in the main argument of the lower Court that if the City can impose a mill tax license, assumed to be two per cent of gross receipts (which, however, is erroneous because not allowing for receipts from other sources, such as running of ambulance and funeral cars, and U. S. mail cars, carrying expressage and freight, etc., as permitted to the lines: See, for instance, Ord. 19,350, sec. 6, p. 35, and Ord. 19,392, sec. 8, p. 38), that then "It can exact 50 per cent. or more, and of course can utterly destroy the value of complainant's property." The Court avowedly supposes a case not before it and argues the denial of all power because of possibility of abuse. The argument logically annuls the right of the City to impose any license tax on street cars, or for that matter on any other conveyance, business or subject of such a tax, as the possibility of abuse exists in any such case. It is sufficient answer that abuse is not present in this case.

This Court has long ago demonstrated the fallacy of that argument.

The possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.

Powell vs. Pennsylvania, 127 U. S. 678, loc. cit. 686.

Verdin vs. St. Louis, 131 Missouri 26, loc. cit. 130, per Sherwood, J., citing Powell vs. Pennsylvania, *supra.*

Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 295-296.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, loc. cit. 563.

The argument is in effect that to permit the State (through the City) to tax this company by a license-tax for the privilege granted by its charter, is to destroy that privilege. But the answer is that the company took the charter subject to the same right of taxation in the State that applies to all other privileges and all other property. If the companies wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business, they should have required a provision to that effect in their charters. The Constitution of the United States does not profess in all cases to protect from unjust and oppressive taxation

Met. St. Ry. vs. N. Y. Tax Com., 199 U. S. 1, loc. cit. 40.

New Orleans Ry. vs. New Orleans, 143 U. S. 192, 195.

Memphis Gas Co. vs. Shelby Co., 109 U. S. 398, 400.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, 563.

Newport News Ry. Co. vs. Newport News, 100 Virginia loc. cit. 163.

There is no presumption against the integrity of the Municipal Assembly; but on the contrary, the presumption favorable to that body is constantly indulged that it is actuated by fair considerations and is free from motives of oppression or wrong.

St. Louis vs. Fischer, 167 Missouri, 654, loc. cit. 663.

St. Louis vs. Howard, 119 Missouri, 47, loc. cit. 50.
Mich. Cent. Ry. vs. Powers, 201 U. S. 245, loc. cit. 295.

(*c*) Neither should this Court, in this proceeding, even consider the question whether the tax be excessive if it has been bona fide enacted, and is not a mere disguise to destroy the privileges conferred in the franchises. Given the power to levy the tax or fix the amount of the license, the argument that it operates oppressively is a consideration which is properly addressed to the municipal assembly and not the Courts.

St. Louis vs. Weitzel, 130 Missouri, 600, loc. cit. 620.
St. Louis vs. Green, 7 Missouri Appeals, 468, 478-479 (affirmed on this point in 70 Mo. 568).
Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.
Kehrer vs. Stewart, 197 U. S. 60, loc. cit. 69-70.
St. Paul vs. Colter, 12 Minn. 41, 49.
Kansas City vs. Trieb, 76 Missouri Appeals, 478.
Home Ins. Co. vs. N. Y., 134 U. S. 594.
21 Am. & Eng. Enc. L. (2nd Ed.), p. 790.

At all events there is no evidence that the tax is confiscatory or unreasonable.

San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 309-310.

VIII.

The form of the car tax is unobjectionable.

Ordinance 21,087 amended the former ordinance so as to substitute for a fixed annual tax of $25.00 per car, a sum

equal to one mill per pay passenger carried. But the tax is still a license-tax *on each car;* it is not a demand for a portion of the fare collected; it is not a tax on the receipts. These may vary, be diminished or increased—the tax never. It is graduated by a fixed method according to the number of persons carried. In the new ordinance the amount is determined by a method uniform and equal in its application to each case. The graduated method is fairer, more equitable, less objectionable. At all events the method is purely one of legislative discretion.

The State and Federal Courts have often sustained this method of graduated tax and recommended it.

Clark vs. Titusville, 184 U. S. 329, loc. cit. 333-334.
Society for Savings vs. Coite, 6 Wall. (U. S.) 594, loc. cit. 608.
Maine vs. Grand Trunk Ry., 142 U. S. 217, l. c. 228-229.
Home Ins. Co. vs. N. Y., 134 U. S. 594, loc. cit. 600.
Aurora vs. McGannon, 138 Missouri, 38.
Amer. Express Co. vs. St. Joseph, 66 Missouri, 675, loc. cit. 680-681.
See also Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 301.

IX.

The dignity of the assailed ordinance as a legislative enactment.

It is also to be remembered that the construction of the lower Court, if sustained, and that asked by appellees, would work a practical annullment of the ordinance, as if it were void.

The Courts will not hold a legislative enactment void except in case of compelling necessity.

The State Constitution provides for the organization of the City of St. Louis by Charter; the Charter provisions are direct delegations of State power to the municipality, and the ordinances enacted by the Municipal Assembly in pursuance thereof, so long as they are in the legitimate sphere of municipal affairs, are entitled to the same force and effect and the same intendments and presumptions of validity as are accorded to enactments of the General Assembly. This is especially true of street railway legislation in St. Louis.

State ex rel. vs. Lindell Ry., 151 Missouri, 162, loc. cit. 182-183.

Grand Ave. Ry. vs. Lindell Ry., 148 Missouri, 637, loc. cit. 645.

See also:

St. Louis vs. West. Union Tel. Co., 149 U. S. loc. cit. 467-470.

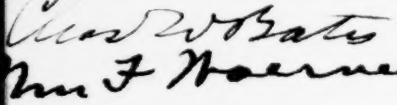
St. Louis vs. Boffinger, 19 Missouri 13, loc. cit. 15.

ARGUMENT.

This case is covered fully by the argument appended to our briefs in cases 193 and 194 (United Railways and St. Louis & Suburban Railway cases, immediately preceding this case on the docket).

We will therefore refer to said argument and omit a repetition thereof in this case.

It is respectfully submitted that there should be a reversal and dismissal of the bill of complaint.



CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant City of St. Louis.